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ABSTRACT

The regulations interpret Virginia's special education legislation as well as P.L. 94-142, the Education For All Handicapped Children Act. Responsibilities of the State Department of Education, including preparing and submitting for approval the Amended Annual Program Plan for the Education of the Handicapped, are considered. The bulk of the regulations focus on six areas of responsibility of local school divisions and state agencies: (1) identification, evaluation, and eligibility (screening, referral, evaluation, eligibility); (2) service delivery (Individualized Education Programs); (3) procedural safeguards (due process, confidentiality, complaint procedures); (4) requirements for establishing surrogate parent procedures for local school divisions and applicable state agencies and institutions (role, appointment, and rights of surrogate parents); (5) administration and governance (personnel development, regional programs); and (6) funding (reimbursement to local school divisions and state operated programs, state funds, federal funds). The final section considers responsibilities of state boards, agencies, and institutions for education and training of children in residence or custody. (CL)

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REGULATIONS GOVERNING SPECIAL EDUCATION PROGRAMS FOR HANDICAPPED CHILDREN AND YOUTH IN VIRGINIA

Commonwealth of Virginia
Office of Special and Compensatory Education
Department of Education
P.O. Box 6Q
Richmond, Virginia 23216

September, 1984

EC180970

ADOPTED BY THE BOARD OF EDUCATION
SEPTEMBER 14, 1984 WITH
AN EFFECTIVE DATE OF JANUARY 1, 1985

PREAMBLE

Article VIII, Section 1, of the Virginia Constitution delineates the General Assembly's responsibility for education as follows: "...shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth..." Chapter 13, Article 2, Section 22.1-214 of the Code of Virginia states: "The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train handicapped children..." Section 22.1-7 of the Code of Virginia addresses the educational responsibility for children and youth in residence or in custody of State agencies, "Each State board, agency, and institution having children in residence or in custody shall provide education and training to such children which is at least comparable to that which would be provided to such children in the public school system." Further, the Code of Virginia provides that all handicapped persons from ages two to twenty-one, inclusive, residing in the Commonwealth of Virginia are identified, evaluated and have available a free and appropriate public education. The provisions set forth in these regulations apply to all public and private schools and agencies in the Commonwealth which provide special education and related services to handicapped children and youth.

STATEMENT OF STATUTORY AUTHORITY

The statutory authority for these regulations is delinated in Article VIII, Section 1 of the Constitution of Virginia, Title 22.1 of the Code of Virginia and the Education for All Handicapped Children's Act (Public Law 94-142, 20 U.S.C. 1232c(b), 1412, 1413).

KEY TO LEGAL CITATIONS

I.	Code of Virginia as Amended	22.1-7-22.1-273 2.1-703
IIa.	Education for All Handicapped Children Act: Public Law 94-142 Regulations	34 C.F.R. 300.5-300.754
IIb.	Education Division General Administrative Regulations (EDGAR)	34 C.F.R. 76.651-76.783
IIc.	Rehabilitation Act of 1973 (Section 504) Regulations	34 C.F.R. 104.3 et seq.
III.	Education of the Handicapped Act: Public Law 93-380 Regulations	34 C.F.R. 99.1-99.67

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I. RESPONSIBILITIES OF THE STATE DEPARTMENT OF EDUCATION

The Virginia Department of Education shall ensure that all handicapped persons from two to twenty-one, inclusive, residing in the Commonwealth of Virginia are identified, evaluated, and have available a free and appropriate public education. The provisions set forth in these regulations shall apply to all public and private schools and agencies in the Commonwealth which provide special education and related services to handicapped children and youth. I. 22.1-213

In keeping with its responsibilities in this regard, the Department of Education (SEA) shall perform the functions which follow:

A. Review and submit to the Board of Education for approval the annual update of the six-year plan for special education programs from each local school division or other public agencies responsible for providing educational services to handicapped children and youth (LEA). I. 22.1-7 I. 22.1-215

B. Prepare and submit for public hearing, for comment from members of the State Special Education Advisory Committee, and for approval by the Board of Education and the U.S. Department of Education, the Amended Annual Program Plan for the Education of the Handicapped. The Amended Annual IIa. 300.110-300.194

Program Plan shall contain assurances of and procedures for:

1. Public notice and opportunity for comment
2. Right to education policy statement
3. Full educational opportunity goal and timelines
4. Policy on priorities
5. Child identification
6. Individualized education program
7. Procedural safeguards
8. Least restrictive environment
9. Protection in evaluation procedures
10. Comprehensive system of personnel development
11. Participation of handicapped children and youth in private schools
12. Placement of handicapped children and youth in approved private nonsectarian schools
13. Recovery of funds
14. Hearing on applications from each LEA
15. Monitoring and evaluation

C. Develop procedures for implementing state and federal laws and regulations pertaining to the education of the handicapped.

D. Assist LEAs and other participating state agencies in the implementation of state and federal laws and regulations pertaining to the education of the handicapped by providing technical assistance and consultative services.

E. Review and evaluate compliance of LEAs with state and federal laws and regulations pertaining to the education of the handicapped.

F. Review and evaluate compliance of approved private nonsectarian schools for handicapped children with state and federal laws and regulations pertaining to the education of the handicapped. IIa. 300.401-402

G. Establish and maintain a state advisory committee composed of persons involved in or concerned with the education of handicapped children and youth. The membership must include, but need not be limited to, at least one representative from each of the groups as follows: IIa. 300.381 (a) IIa. 300.650 IIa. 300.651

1. Handicapped individuals;
2. Teachers of the handicapped;
3. Parents of handicapped children and youth;
4. State and local education officials;
5. Special education program administrators;
6. Public and private institutions of higher education; and
7. Advocacy groups

H. Develop and implement a comprehensive personnel development plan which focuses on pre- and in-service educational needs. IIa. 300.382-383

I. Develop procedures for disseminating significant information derived from research, demonstration programs and projects involving the handicapped. IIa. 300.384-385

J. Secure agreements from state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of educational and related services to all handicapped children and youth.	I. IIa.	22.1-214 (F) 300.554
K. Disburse the appropriated funds for the education of handicapped children and youth in the Commonwealth to LEAs which are in compliance with state and federal laws and regulations pertaining to the education of the handicapped.		
L. Establish procedures to ensure that the placements of handicapped children and youth by other public agencies are in compliance with state and federal laws and regulations pertaining to the education of the handicapped.	Ia. IIa.	22.1-214 ( ) 300.550-552
M. Establish reasonable tuition costs and other reasonable charges for each approved private nonsectarian school for the handicapped based on the special education and services provided. Charges for other services, in addition to room and board, will be established in cooperation with other state agencies having similar responsibilities. All such cost and charges shall be established in accordance with the process determined by the Interdepartmental Committee on Rate Setting for Children's Facilities.	I. I.	2.1-218 2.1-703
N. Report and certify annually to the appropriate federal agency the following:	IIa.	300.751-754

1. The number of handicapped children and youth in local school divisions receiving special education and related services on December 1; and

2. The number of handicapped children and youth in state-operated programs receiving special education and related services on October 1.

O. Publish an annual report which summarizes special education and related services provided handicapped children and youth. IIa. 300.750

P. Review, investigate, and act on any allegations of substance which may be made by public or private agencies, individuals, or organizations of actions taken by any public agency that are contrary to the requirements of laws and regulations affecting the education of handicapped children and youth. I. 22.1-218

Q. Report to the State Special Education Advisory Committee all findings and decisions of due process hearings. IIa. 300.508 (a)(5)

R. Establish procedures designed to fully inform parents and handicapped children and youth of educational rights and due process procedures. IIa. 300.561 IIa. 300.574

S. Provide private schools with copies of all state regulations and standards relating to the education of the handicapped and revisions of these regulations and standards as they occur. IIa. 300.402 (b)

T. Afford private schools the opportunity to participate in the development and revision of regulations and standards which apply to them. IIa. 300.402 (c)

II. RESPONSIBILITIES OF LOCAL SCHOOL DIVISIONS AND STATE AGENCIES

The requirements set forth in this section are applicable to local school divisions and state agencies providing education and related services for handicapped children and youth.

The requirements, developed in accordance with state and federal laws and regulations, are consistent with the Department of Education's responsibilities outlined as follows:

A. Identification, Evaluation, and Eligibility

1. Target Ages and Eligibility
2. Definitions of Handicapping Conditions
3. Child Find
4. Screening
5. Referral
6. Evaluation
7. Assessment Components
8. Eligibility
9. Termination of Services
10. Child's Status Pending Determination of Eligibility

B. Service Delivery

   1. Free Appropriate Public Education
   2. Individualized Education Program

C. Procedural Safeguards

   1. Due Process
   2. Confidentiality of Information
   3. Complaint Procedure

D. Requirements for Establishing Surrogate Parent Procedures for Local School Divisions, and Applicable State Agencies and Institutions

   1. Role of Surrogate Parents
   2. Appointment of Surrogate Parents
   3. Identification and Recruitment of Surrogate Parents
   4. Qualifications of Surrogate Parents
   5. Rights of Surrogate Parents
   6. Responsibilities of Surrogate Parents
   7. Responsibilities of Local Education Agencies

E. Administration and Governance

   1. Plans, Applications, and Reports
   2. Personnel Development
   3. Local Advisory Committee
   4. Regional Programs

F. Funding

   1. Reimbursement to Local School Divisions and State-Operated Programs

2. State Funds

3. Federal Funds

4. Funds to Assist with the Education of Handicapped Children Residing in State-Operated Facilities

5. Funding, Withholding, and Recovery of Funds

6. Appeal of Administrative Decisions

A. Identification, Evaluation, and Eligibility

1. Target Ages and Eligibility

Each annual update of the six-year plan for I. 22.1-7
special education programs shall include procedures which I. 22.1-213
ensure that all children and youth residing within the I. 22.1-215
jurisdiction of an LEA, birth to age 21, inclusive, who may IIa. 300.128
be handicapped, and who may need special education and (a)
related services are identified, located, and evaluated. IIa. 300.220
The plan also shall include a practical method for determining children and youth who are receiving needed special education and related services and those who are not receiving such services.

2. Definitions of Handicapping Conditions

The term "handicapped children" means those I. 22.1-213
children who are mentally retarded, hard of hearing, deaf, IIa. 300.5
speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, autistic, deaf/blind, severely and profoundly handicapped, multihandicapped, or have a specific

learning disability, who, because of such impairments, need special education and related services.

The terms used are defined as follows:

a) "Autism" means a behaviorally defined syndrome; the essential features are typically manifested prior to thirty months of age and include disturbances of:

(1) Developmental rates and/or sequences;

(2) Responses to sensory stimuli; and

(3) Speech, language, and cognitive capacities and capacities to relate to people, events, and objects.

b) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

c) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational problems so that they cannot be accommodated in special education programs solely for deaf or blind children.

d) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

e) "Mentally retarded" means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

f) "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

g) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g. clubfoot, absence of some member, etc.) impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns which cause contractures).

h) "Other health impaired" means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

i) "Seriously emotionally disturbed" is defined as follows:

(1) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree which adversely affects educational performance:

(a) an inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) inappropriate types of behavior or feelings under normal circumstances;

(d) a general pervasive mood of unhappiness or depression; or

(e) a tendency to develop physical symptoms or fears associated with personal or school problems.

(2) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

j) "Severely and Profoundly Handicapped" is defined as follows:

(1) The term includes individuals who:

(a) Have primary disabilities that severely impair cognitive and/or adaptive skills and life functioning; and

(b) May have associated severe behavior problems; and

(c) May have the high probability of additional physical and/or sensory handicaps; and

(d) Do require significantly more educational resources than are provided for the mildly and moderately handicapped in special education programs.

(2) Specifically included are:

(a) Individuals diagnosed as severely and profoundly mentally retarded; and/or

(b) Individuals who exhibit two or more severe handicaps, i.e., physical, sensory, behavioral.

NOTE: The term does not, however, include individuals of normal intelligence who are orthopedically and other health impaired regardless of the number of related support services they require.

k) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations which adversely affects the child's educational performance. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

I. 22.1-213
IIa. 300.5

l) "Speech and language impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

m) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

n) Preschool handicapped children (below age 5) may be identified by:

(1) Any of the terms defined above, or as

(2) "Developmentally delayed," which means a child below age 5 who exhibits a significant delay in one or more of the areas of development:

(a) Cognitive ability

(b) Motor skills

(c) Social/adaptive behavior

(d) Perceptual skills

(e) Communication skills

3. Child Find

a) Each local school division shall, at least annually, conduct a public awareness campaign to:

(1) Inform the community of a person's statutory right to a free appropriate education and the availability of special education programs and services;

(2) Generate referrals; and

(3) Explain the nature of handicapping conditions, the early warning signs of handicapping conditions, and the need for early intervention.

b) Procedures for informing the community shall show evidence of the use of a variety of materials and media, and shall:

(1) Provide for personal contacts with community groups, public and private agencies and organizations; and

(2) Provide information in the person's native language or primary mode of communication.

c) There shall be evidence of involvement of parents and community members, as well as the local special education advisory committee, in the required child find and community awareness campaign.

d) Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children from birth to 21, inclusive, who are in need of special education and related services. Written procedures shall be established for collecting, reviewing and maintaining such data.

e) All children ages 2 to 21, inclusive, not enrolled in school and who are suspected of having a handicapping condition shall be referred to the division superintendent, or designee, who shall initiate the process of determining eligibility for special education services.

f) Where such children are determined to be eligible for special education services, school divisions are required to offer appropriate programs and placements consistent with each child's IEP from ages 2 to 21, inclusive.

4. Screening

a) Each local school division shall establish and maintain screening procedures to assure the identification of handicapped persons requiring special education residing within its jurisdiction. All procedural I. 22.1-215 safeguards shall be maintained during the screening process. These include the following:

(1) Written notice;

(2) Confidentiality; and

(3) Maintenance of student's scholastic record.

b) The screening process for all children enrolled in the school division is as follows:

(1) All children, within 60 administrative working days of initial enrollment in a public school, shall be screened in the following areas to determine if formal assessment is indicated:

(a) Speech, voice, and language;

(b) Fine and gross motor functions; and

(c) Vision and hearing. I. 22.1-273

(2) Specific measures or instruments will be employed which use:

(a) Both observational and performance techniques; and

(b) Techniques which guarantee non-discrimination.

c) There shall be established a formal child study committee in each school to review records and other performance evidence of those children referred through a screening process. All referrals shall be made to the principal or designee. The committee shall consist of at least three persons, including:

(1) Principal, or designee;

(2) Teachers;

(3) Specialists; and

(4) Referring source, as appropriate (except when referring source would breach confidentiality of child).

d) The child study committee shall meet within 10 administrative working days following referral.

e) Actions by the committee shall be documented in writing and shall include information upon which a decision was based. The formal assessment components shall not be initiated (collected) before referral to the special education administrator and parental consent has been obtained.

5. Referral

a) Children suspected of being handicapped shall be referred by this committee to the special education administrator for formal assessment. The referral to the special education administrator from the child study committee shall be made within five (5) administrative working days following the determination by the child study committee that the child is suspected of being handicapped. The special education administrator, or designee, shall:

(1) Record the date, reason for referral and name(s) of the person/agency making the referral;

(2) Implement procedures for maintaining the confidentiality of all data and institute procedural safeguards to:

(a) Inform the parent of the referral in the native language or primary mode of communication, unless it is clearly not feasible to do so;

(b) Advise the parent of his/her rights in the native language or primary mode of communication; and

(c) Secure written permission of the parent for the assessment;

(3) Initiate formal assessment procedures; and

(4) Notify the referral source, when appropriate, of the results of the decision regarding determination of eligibility.

6. Evaluation

a) The LEA shall establish procedures for the evaluation of referred children which include the following:

(1) Written prior notification (in native language)

(2) Opportunity for independent evaluation;

(3) Written parental consent;

(4) Assignment of surrogate parent when necessary;

(5) Opportunity for an impartial hearing;

(6) Confidentiality;

(7) Opportunity for examination of records; and

(8) Nondiscriminatory testing.

b) The LEA shall establish policies and procedures to ensure that tests and other evaluation materials: **IIa. 300.532 (a)**

(1) Are neither culturally nor racially discriminatory;

(2) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(3) Have been validated for the specific purpose for which they are used; and

(4) Are administered by trained personnel in conformance with the instructions provided by their producer:

(a) Tests and other evaluation materials include those tailored to assess specific areas of **IIa. 300.532 (b)** educational need and not merely those which are designed to provide a single general intelligence quotient;

(b) Tests are selected and administered so as to best ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure); IIa. 300.532 (c)

(c) No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child; IIa. 300.532 (d)

(d) The evaluation shall be made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability; IIa. 300.532 (e)

(e) For a child suspected of being learning disabled, the multi-disciplinary team: IIa. 300.540

i) Shall include the child's regular teacher or if the child does not have a regular teacher, a classroom teacher qualified to teach a child of that age, or if a child is below school age, a person qualified to teach that age; and

ii) Shall include at least one person qualified to conduct individual diagnostic examinations of children and knowledgeable in the handicapping condition.

I. 22.1-214
IIa. 300.532 (f)

c) The LEA shall establish procedures to ensure that each child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. However, the hearing of each handicapped child shall be tested prior to placement in a special-education program. A complete audiological assessment, including tests which will assess inner and middle ear functioning, must be performed on each child who fails the hearing screening tests.

d) The LEA shall solicit and consider pertinent information from the agency that has been assigned legal custodial rights of a handicapped child concerning evaluation of such child.

e) The LEA shall establish procedures to ensure that eligibility for special education and related services is determined within 65 administrative working days after request for such services by the child study committee to the special education administrator.

7. Assessment Components

The eligibility of children for special education programs and related services shall be based upon a formal assessment involving the components as follows:

a) Educational: written report describing current educational performance and identifying instructional strengths and weaknesses in academic skills and language performance.

b) Medical: written report from a licensed physician indicating general medical history and any medical/health problems which may impede learning.

c) Sociocultural: written report from a qualified visiting teacher or school social worker based on the use of information collected through social appraisal instruments which shall include background and social/adaptive behavior in home, school, and community.

d) Psychological: written report from a qualified psychologist based on the use of a battery of appropriate instruments which shall include individual intelligence test(s), and psychoeducational tests. Also, when appropriate, a clinical/psychiatric evaluation shall be included.

e) Developmental: written report of assessment of how the child functions in the major areas of development such as cognition, motor, social/adaptive behavior, perception, and communication.

f) Other, such as: speech, language, etc., where appropriate and/ or necessary. Minimum assessment components shall be completed by qualified professional(s) prior to review by the eligibility committee for children suspected of being handicapped in one or more of the following areas: (These requirements are also applicable when the triennial review is conducted.)

(1) Mentally retarded--psychological, medical, sociocultural and educational/developmental.

(2) Learning disabled--educational, medical, sociocultural, and psychological; observation of academic performance in regular classroom by at least one team member other than the child's regular teacher (or in the case of a preschool or out-of-school student, the observation shall be made in an appropriate environment). IIa. 300.542

(3) Seriously emotionally disturbed--educational, medical, sociocultural, and psychological.

(4) Hearing impaired--medical (to include complete audiological assessment which will assess inner and middle ear functioning), educational, sociocultural, and psychological. I. 22.1-214

(5) Visually impaired--medical (to include examination by an eye specialist), educational, sociocultural, and psychological.

(6) Orthopedically impaired--medical (to include prescription(s) for occupational therapy and/or

physical therapy when appropriate), educational, sociocultural, and psychological.

(7) Other health impaired--medical (with special examination reports as appropriate), educational, sociocultural, and psychological.

(8) Severely and profoundly handicapped--medical (to include prescriptions for occupational and/or physical therapy when appropriate), educational/developmental, socio-cultural, and psychological.

(9) Speech and language impaired--speech and language, audiological, educational, and other reports as appropriate. When the child has not made satisfactory progress after receiving two years of speech services a comprehensive assessment must be completed which consists of the following: medical, sociocultural, psychological, and educational.

(10) Preschool--medical, sociocultural, developmental, and psychological.

(11) Autism--medical (with special examination reports as appropriate), educational/developmental, sociocultural, speech and language, and psychological.

(12) Multihandicapped--medical (with special examination reports as appropriate), educational, sociocultural, and psychological.

8. Eligibility

Eligibility of children for special education programs and related services shall be determined by an eligibility committee.

a) Membership of the eligibility committee shall include, but not be limited to, school division personnel representing the disciplines providing assessment components and the special education administrator, or designee. At least one school division representative serving on the eligibility committee must have either assessed or observed the child.

b) The eligibility committee shall review the assessment components, any pertinent information reported by an agency assigned legal custody of the child, and any other special reports to determine if the child has a handicapping condition which requires a special education program and related services.

c) The eligibility committee shall follow due process procedures in the determination of eligibility and in ensuring the confidentiality of records.

d) The eligibility committee shall have a written summary of minutes which consists of essential deliberations supporting its findings as to the eligibility of each child for a special education program and related services. The minutes shall be signed by each eligibility committee member present.

(1) The written summary shall be maintained in the child's confidential file(s); and

(2) A summary statement of the eligibility committee's recommendations shall be forwarded by the committee to the Individualized Education Program (IEP) committee upon determination of eligibility. The summary statement may include recommendations on the appropriate level of services, however, specific placement or recommendations for program development shall not be included.

(3) The written summary concerning students identified as learning disabled shall include: IIa. 300.543

(a) A statement indicating whether or not the child has a specific learning disability;

(b) The basis for making the determination;

(c) Relevant behavior noted during the observation and the relationship of that behavior to the child's academic functioning;

(d) Educationally relevant medical findings, if any;

(e) Information indicating whether or not there is a severe discrepancy between the child's achievement and ability which cannot be corrected without special education and related services;

(f) Effects of any environmental, cultural, or economic disadvantage, as determined by the team; and,

(g) A statement by each eligibility committee member that the report reflects his/her conclusions. If it does not, the team member must submit a separate statement presenting his/her conclusions.

9. Termination Of Services

Termination of special education services for a child, or removal of a child from special education programs, shall be the joint responsibility of the eligibility and IEP committees.

10. Child's Status Pending Determination Of Eligibility **IIa. 300.531**

a) The child shall remain in the current placement during determination of eligibility for special education and related services.

b) A handicapped child shall be placed with consent of the parent in a special education program consistent with the current IEP during the process of determination of eligibility for special education upon transfer from another LEA or another state.

B. Service Delivery

1. Free Appropriate Public Education

a) Definition

The term "free appropriate public education" (FAPE) means special education and related services which: IIa. 300.4

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the Board of Education;

(3) Include preschool, elementary, secondary, and vocational education;

(4) Make available physical education services; IIa. 300.307

(5) Are provided in conformity with an IEP; and

(6) Are provided in the least restrictive environment.

b) Timelines

(1) A free appropriate public education shall be available to all handicapped children, ages 2 to 21, inclusive, residing within the jurisdiction of each LEA. I. 22.1-214 IIa. 300.300

(2) Each LEA shall establish the goal of providing a full educational opportunity for all handicapped children from birth to 21, inclusive, residing within their jurisdiction, to be fully implemented no later than September 1, 1990. IIa. 300.304

c) Continuum of Alternative Placements IIa. 300.551

(1) Each local school division shall (a)
ensure that a continuum of alternative placements is I. 22.1-216
available to meet the needs of handicapped children who need I. 22.1-218
special education and related services.

(a) No single model for the delivery of services to any specific population or category of handicapped children will be acceptable for meeting the requirement for a continuum of alternative placements (e.g. resource classes as the only option for children who need a self-contained placement or a separate facility as the only alternative placement for handicapped students). All placement decisions must be based on the individual needs of each child, and therefore, categorical placements of handicapped children are not permitted.

(b) Any placement may be considered categorical if no other placement option exists for that child. LEAs shall document fully all alternatives considered and the rationale for choosing the selected placement.

(c) Handicapped children must be served in a program with age-appropriate peers (e.g. secondary age children shall be placed in a secondary school and primary age children shall be placed in a primary school), unless it can be shown that for a particular handicapped child the alternative placement is appropriate.

(2) If a local school division is unable to provide a free appropriate public education to a handicapped child and it is not appropriately available in a State facility, the local school division shall offer to place the child in a nonsectarian private school for the handicapped approved by the Board of Education or such other licensing agency as may be designated by state law. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined by the Board of Education. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate. I. 22.1-218

d) Least Restrictive Environment (LRE)

General Requirements

(1) Each LEA shall establish and implement procedures which satisfy requirements as follows: IIa. 300.550 (b)

(a) To the maximum extent appropriate, handicapped children, including those in public or private institutions or other care facilities, are educated with children who are not handicapped; and

(b) Special class placement, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for nonhandicapped children, each LEA shall ensure that each handicapped child participates with nonhandicapped children in those services and activities, to the maximum extent appropriate to the needs of the handicapped child.

(3) For children in public or private institutions, the LEA shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (see Placements, Sec. IIB2i.) **IIa. 300.554**

e) Safeguards in Evaluation, Eligibility and Placement

(1) In interpreting evaluation data and in making eligibility and placement decisions, each LEA shall: **IIa. 300.533 (a)**

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(b) Ensure that information obtained from all of these sources is documented and carefully considered;

(c) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(d) Ensure that the placement decision is made in conformity with the least restrictive environment (see Least Restrictive Environment, Sec. IIB1d.)

(2) If it is determined that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with these regulations. IIa. 300.533 (b)

f) Transportation

(1) Each handicapped child enrolled in and attending an education program provided by the local school division shall be entitled to transportation to and from such school or class at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. I. 22.1-221

(2) If a LEA enters an agreement with another LEA for the provision of special ducation and/or related services for a handicapped child, such child shall be transported to and from such program at no cost to the parent.

(3) When, pursuant to an IEP, a local school division initiates educational placement of a handicapped child in a facility operated by the Department of Mental Health and Mental Retardation, the local school division is responsible for the payment of reasonable transportation costs attendant thereto.

(4) If a handicapped child is placed in a state residential school for the deaf and the blind, the responsibility for transportation resides with the respective state school. However, when such children in a state residential school are educated as day students, the responsibility for transportation remains with the placing local school division.

(5) If an LEA places a handicapped child in a private school or facility, then the LEA shall provide transportation as follows:

(a) At day schools on all school days as required in the IEP and specified in the Formal Agreement for Services between the LEA and the private nonsectarian school.

(b) At residential schools, at openings and closings of the private school and for those holidays or vacation periods during the school year when the private school is officially closed, or in accordance with other provisions as written in the Formal Agreement for Services to implement the IEP.

(c) The LEA may, in lieu of providing transportation, and with the consent of the parents, allot funds to pay the reasonable cost of transportation for attendance to day and residential schools, which shall be equivalent to the amount established by the LEA as mileage reimbursement to school personnel, or an amount equivalent to the lowest common carrier rate between the location of the private school and the LEA.

g) Re-evaluation

Each LEA shall ensure that an evaluation of the child, based on required procedures, is conducted: IIa. 300.534

(1) Every three years, or more frequently if conditions warrant; or

(2) Anytime the child's parent or teacher makes a request, after the need is justified; or

(3) Anytime a significant change in placement is being considered. IIc. 104.35

2. Individualized Education Program

a) Definition

The term "individualized education program" (IEP) means a written statement for a handicapped child that is developed and implemented in accordance with these regulations. IIa. 300.340

b) Responsibility

The LEA shall ensure that an IEP is developed and implemented for each handicapped child in its jurisdiction, including such children placed in private schools or facilities.

c) Accountability

(1) An IEP must:

(a) Be in effect before special education and related services are provided to a child; and IIa. 300.342 (a)

(b) Be developed within 30 calendar days of a determination that the child needs special education and related services, with placement effected as soon as possible.

(2) Each LEA shall initiate and conduct meetings periodically to review each child's IEP and, where appropriate, revise its provisions. A meeting must be held for this purpose at least once a year. IIa. 300.343 (d)

(3) Each LEA must provide special education and related services to a handicapped child in accordance with an IEP.

d) Participants in Meeting IIa. 300.344

(1) The LEA shall ensure that each meeting includes participants as follows:

(a) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education.

(b) The child's teacher;

(c) One or both of the child's parents (see Parent Participation, Sec. IIB2e.);

(d) The child, when appropriate;

(e) Other individuals, at the discretion of the parents or agency.

(2) For a handicapped child who has been evaluated for the first time, the LEA shall ensure that:

(a) A member of the evaluation team participates in the meeting; or

(b) The representative of the LEA, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

e) Parent Participation

(1) Each LEA shall take steps to ensure that one or both of the parents, and a representative of the agency assigned legal custody, of the handicapped child are present at each meeting or are afforded the opportunity to participate, including; **IIa. 300.345**

(a) Notifying the parents, and agency assigned legal custody of the meeting early enough to ensure that they will have an opportunity to attend, and

(b) Scheduling the meeting at a mutually agreed on time and place.

(2) The notice given the parents, and agency assigned legal custody, must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(3) If neither parent can attend, then the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

(4) A meeting may be conducted without the child's parent(s) attending if the LEA is unable to convince them that they should attend. In this case, the agency must have a record of the attempts to arrange a mutually agreed on time and place, such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received;

(c) Detailed records of visits made to the parents' home or place of employment and the results of those visits.

(5) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(6) The LEA shall give the parent, and custodial agency, a copy of the IEP.

f) Content of the Individualized Education Program **IIa. 300.346**

The IEP for each child must include:

(1) A statement of the child's present level of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided for the child, and the extent to which the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term instructional objectives are being achieved.

(6) In the event that a handicapped child does not wish to take the Minimum Competency Tests (MCT), the school division shall document that the implication of not taking the test have been explained to the parent(s) and the child, and that a waiver has been signed by the parent(s), and child when appropriate, requesting that the child not participate in the testing program. The school

division shall note on the IEP that the MCT has been presented and objected to, or accepted, at the appropriate time.

Under certain conditions the reading test must be administered orally, including the use of audio cassettes, to children who cannot read the tests because of a visual or perceptual impairment. The following conditions must be met:

(a) The decision to administer the tests orally shall be preceded by counseling with the child and parent(s).

(b) The child shall first have attempted to pass the test in his/her primary reading medium using the regular print, large print, or Braille edition. If necessary, the child shall be granted additional time to take the test without being penalized.

(c) A copy of the child's IEP shall be submitted to the Department of Education by the local school division. The IEP will be reviewed and the request for oral adminisration will be approved or denied.

(d) If the test is administered orally, then the child's permanent record and any other school documents which contain the competency test scores shall clearly state that the reading test was a measure of the child's ability to process information read to him/her and not a measure of ability to decode printed symbols.

g) Private School Placement **IIa. 300.347**

(1) Before a local school division places a handicapped child in, or refers a child to, a private school or facility, the local school division shall initiate and conduct a meeting, in accordance with the preceding requirements, to develop an IEP for the child. **(a)**

(2) The local school division shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) After a handicapped child enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school division. **IIa. 300.347 (b)**

(4) If the private school or facility initiates and conducts these meetings, the local school division shall ensure that the parents and a local school division representative:

(a) Are involved in any decision affecting the child's IEP; and

(b) Agree to any proposed changes in the program before those changes are implemented.

(5) When a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the local school division.

(6) Whenever an eligible handicapped child is placed in an approved private school or facility by a local school division, steps shall be taken to ensure that all rights extended to any child educated in public school Orograms are available to him/her. IIa. 300.401 (b)

h) Handicapped Children in Parochial or Other Private Schools IIa. 300.348

If a handicapped child is enrolled in a parochial or other private school and requires special education and related services from a public agency, the local school division shall:

(1) Initiate and conduct meetings, in accordance with the preceding requirements, to develop and review an IEP for the child; and

(2) Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

i) Placements

Each LEA placing the child shall ensure that: IIa. 300.552

(1) Each handicapped child's educational placement: I. 22.1-214 (f)

(a) Is determined at least annually;

(b) Is based on his/her IEP; and

(c) Is as close as possible to the child's home.

(2) The various alternative placements are available, to the extent necessary, to implement the IEP for each handicapped child. The local school division shall consider placement of a handicapped child in a private nonsectarian program only after it has been determined that the local school division is unable to provide free appropriate public education for a handicapped child either locally or through arrangement with other local school divisions, and such a program is not appropriately available in a state facility.

(3) Unless a handicapped child's IEP requires some other arrangement, the child is educated in the school which he/she would attend if not handicapped.

(4) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he/she needs.

(5) The placement decision shall include consideration of the child's social and personal

needs, derived from the child's sociocultural assessment, as well as the child's level of educational functioning.

j) Handicapped Children in Private Schools IIa. 300.403
Not Placed or Referred by Public Agencies

(1) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, then the local school division is not required to pay for the child's education at the private school or facility. However, the local school division shall make services available to the child as follows:

(a) Each local school division IIb. 76.651
shall provide special education and related services designed to meet the needs of private school handicapped children residing in its jurisdiction;

(b) Each local school division shall provide private school handicapped children with genuine opportunities to participate in special education and related services consistent with the number of children and their needs.

(2) The needs of private school IIb. 76.652-653
handicapped children, the number who will participate, and the types of special education and related services which the local school division will provide for them must be determined after consultation with persons knowledgeable of the needs of these children, on a basis comparable to that

used in providing for the participation of handicapped children enrolled in public schools.

(3) Services to private school handicapped children may be provided through such arrangements as dual enrollment, educational radio and television, and the use of mobile educational services and equipment.

(4) A local school division may provide special education and related services to private school handicapped children which are different from the special education and related services it provides to public school children, if:

(a) The differences are necessary to meet the special needs of the private school handicapped children; and **IIb. 76.654**

(b) The special education and related services are comparable in quality, scope, opportunity for participation to those provided to public school children with needs of equal importance.

(5) Each LEA providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services. **IIb. 76.651**

k) Children on Homebound Instruction

Homebound instruction shall be deemed appropriate for a handicapped child only when such placement is stipulated in the child's IEP and is in accordance with the requirements of the least restrictive environment.

Homebound instruction shall be deemed appropriate for non-handicapped children when they become temporarily disabled to the extent that they cannot attend regular classes.

1) Handicapped Children Suspended or Expelled

Where a disciplinary action involving long-term suspension or expulsion of a handicapped child is being considered, a determination must be made as to whether or not there is a direct causal relationship between the child's handicap and the misconduct. This determination must be made by a specialized, knowledgeable group of persons pursuant to the change of placement procedures. If a direct causal relationship is found, the appropriateness of the current placement must be reassessed.

C. Procedural Safeguards

1. Due Process **IIa. 300.501**

a) Each LEA shall establish and implement procedural safeguards as follows:

(1) The parent of a handicapped child, upon request, shall be afforded an opportunity to inspect and review all education records involving:

(a) The identification, evaluation, or educational placement of the child; or

(b) The provision of a free appropriate public education to the child. (See Confidentiality of Information, IIC2.)

(2) The parent of a handicapped child shall be provided, on request, information as to where an independent educational evaluation (IEE) may be obtained. IIa. 300.503

(3) The parent of a handicapped child shall have the right to obtain an IEE of the child: IIa. 300.503

(a) Such IEE will be at public expense if the parent disagrees with an evaluation obtained by the LEA; however, the LEA shall have the right to initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an IEE, but not at public expense.

(b) Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA uses when it initiates an evaluation.

(c) The results of the IEE:

i) Must be considered by the LEA in any decision regarding a free appropriate public education for the child; and

ii) May be presented as evidence at a hearing under this section.

(4) The parent of a handicapped child shall be given written notice within a reasonable time before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child. IIa. 300.504 (a)

(5) The notice shall include: IIa. 300.505

(a) A full explanation of all procedural safeguards available to the parents;

(b) A description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any options the LEA considered and the reasons why those options were rejected;

(c) A description of the nature, purpose, and use of any evaluation procedure, test, record, or report the LEA used as a basis for the proposal or refusal; and

(d) A description of any other factors which are relevant to the LEA's proposal or refusal.

(6) Information contained in the notice shall be: IIa. 300.505 (b)

(a) Written in language understandable by the public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, then the LEA shall take steps to ensure:

i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

ii) That the parent understands the content of the notice; and

iii) That there is documentation that the requirements have been met.

(7) Written parental consent shall be IIa. 300.504
obtained before: (b)

(a) Pre-placement evaluation;

(b) Initial placement of a handicapped child in a program providing special education and related services;

(c) Any changes in the identification, evaluation, or educational placement of a handicapped child.

b) Impartial Due Process Hearing I. 22.1-214

(1) Each LEA or the parent of a child (b)
determined or believed to be handicapped, shall have the IIa. 300.504
right to initiate a hearing within six months of the time IIa. 300.506

when a disagreement occurs on matters relating to identification, evaluation, (including determination of whether or not an IEE at public expense is appropriate) or educational placement of the child or the provision of a free appropriate public education for the child. The LEA may initiate due process to appeal parental refusals for evaluation or provision of special education and related services. For purposes of this provision, the time when a disagreement occurs shall be deemed to mean when such disagreement is discovered or by the exercise of due diligence reasonably should have been discovered.

(2) Disputes between parents and LEAs which may not be appealed through the impartial hearing process are matters within the purview of public agency prerogatives. Matters such as instructional materials, assignment of instructional or support personnel, and methods of instruction are considered public agency prerogatives and as such are not subject to appeal.

c) Child's Status During Proceedings IIa. 300.513

The child's status during proceedings shall be as follows:

(1) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the LEA and the parent of the child agree otherwise, the child must remain in his/ her current educational placement. While the placement may not be changed, this does

not preclude using normal procedures for dealing with children who are endangering themselves or others.

(2) If the issue involves an application for initial admission to an LEA, the child of school age with consent of the parent, must be placed in the LEA program until the completion of all proceedings.

d) Mediation IIa. 300.506

The regulations do not preclude the use of mediation in the resolution of differences, but mediation shall not be used to deny or delay a parent's rights. Such mediation may be conducted only by personnel who were not previously involved in the particular case. Should the mediation process be formalized, as an intervening step within the impartial due process hearing procedure, appropriate policy shall be established. However, such mediation shall not extend the procedure beyond the forty-five (45) calendar days period unless otherwise approved and documented by the hearing officer upon request of the parties. The hearing officer shall notify the parties and the SEA in writing of the specific number of days to be allowed for mediation.

e) Commencement of the Due Process Hearing

(1) Request for a hearing shall be made to the local school board or other public agency board as appropriate.

(2) The LEA shall inform the parent IIa. 300.506
of any free or low-cost legal or other relevant services (c)
available in the area when:

(a) The parent requests the information; or,

(b) The parent or the LEA initiate(s) a hearing.

(3) The hearing shall be conducted by I. 22.1-214
an independent hearing officer who shall be appointed on a IIa. 300.506
rotating basis by the local school board or other public IIa. 300.507
agency board as appropriate from a list maintained by the (c)
SEA. However, the local school board, or other public agency board as appropriate, may delegate the authority to appoint a hearing officer to the division superintendent, or agency head, to be confirmed by the appropriate board at its subsequent meeting. The appointment must be made within 5 administrative working days following the request for a hearing to facilitate compliance with the forty-five (45) calendar days timeline.

f) Qualifications, Removal, Substitution IIa. 300.507
and Challenge of Hearing Officers

(1) Qualifications

The hearing officer, in order to serve in any appeal, must meet the requirements as follows:

(a) Be a member of the Virginia Bar and approved by the Office of the Attorney General;

(b) Attend required training sessions;

(c) Adhere to timelines attendant to due process hearings;

(d) Adhere to SEA and any other applicable due process policies and procedures;

(e) Be unbiased -- not prejudiced for or against any party involved in the hearing;

(f) Be disinterested -- not having any interest in the outcome; and, IIa. 300.507 (a)(2)

(g) Be independent -- not an officer or agent of the LEA or the SEA. IIa. 300.507 (a)

(Note: A person who otherwise qualifies to serve as a hearing officer is not an employee of the agency solely because he/she is paid by the agency to serve in this capacity.) IIa. 300.507 (b)

(h) Be without conflict of interest -- not representing a parent or LEA (in a special education case) in the same jurisdiction for which he/she serves as a hearing officer.

(2) Removal of Hearing Officers

When it comes to the attention of the appropriate person in the SEA that a hearing officer has not met all of the above conditions, the particulars of the situation shall be forwarded to the Office of the Attorney General for appropriate steps for removing the hearing officer from the list. LEA personnel and/or parties to a hearing should report suspected infractions by the hearing officer(s) to the SEA.

(3) Substitution of Hearing Officers

In the event that a due process hearing is interrupted due to a hearing officer's inability to fulfill his/her responsibilities due to death, serious illness or removal, then the following procedures shall be observed:

(a) If the hearing has been completed and only the decision is pending, then the LEA shall appoint a new hearing officer to render the decision upon reviewing the hearing record and evidence.

(b) If the hearing is interrupted prior to the completion of the hearing, then the LEA shall appoint a new hearing officer to hear the case de novo.

(4) Challenge of Hearing Officers

When a party wishes to challenge the appointment of a hearing officer, the reasons for such challenge should be conveyed to that hearing officer. If the hearing officer finds such challenge has merit, then he/she shall notify the LEA that another appointment is in order and excuse himself/herself from the case. The LEA shall then make another appointment in compliance with the rotation schedule.

g) Responsibilities of LEA - Pre-Hearing IIa. 300.512

(1) The LEA shall appoint the hearing officer in such a manner as to protect the confidentiality of the parent(s) and the child. All necessary information shall be forwarded promptly to the hearing officer, together with the official request for a hearing in order to ensure that timelines are maintained.

(2) The LEA shall send a copy of the correspondence appointing a hearing officer along with a copy of the request for a hearing to the SEA, within five (5) administrative working days of the appointment of a hearing officer.

(3) The LEA shall arrange for recording equipment to be set up, or a stenographer to be present, in the hearing room. The LEA shall also ensure that the recording equipment, if used, is reliable and working and that the recording is clear and can be transcribed, if necessary. A complete, accurate, written verbatim transcript of the proceedings need not be made at the conclusion of the hearing, unless the hearing or reviewing officer needs it for review prior to rendering a decision. When there is an appeal of the decision, a copy of the recording, or transcript, shall be supplied to the parties to the hearing, upon request, at a reasonable cost not to exceed the cost of copying (Xerox or similar method). IIa. 300.508 (a)(4)

h) Responsibilities of the Hearing Officer - Pre-Hearing

(1) The hearing officer shall, within 5 administrative working days of appointment, secure a time, date, and location for the hearing which are convenient to both parties.

(2) The hearing officer shall notify both parties to the hearing, and the SEA, in writing, of the time, date, and location of the hearing.

(3) The hearing officer shall ascertain whether or not the parties will have attorneys at the hearing. If so, the hearing officer shall send copies of correspondence to the attorneys of the parties.

(4) The hearing officer shall ascertain from the parents whether the hearing will be open or closed.

(5) The hearing officer shall ensure that a stenographer, or recording equipment, is present at the hearing. If a tape recorder is used, then the hearing officer shall be provided a written list of speakers in order of appearance, or, at the beginning of the hearing identify on tape each speaker's title, position, and interest in the proceeding. Thereafter, each speaker, prior to addressing the hearing, shall state his/her name for the record. Either a power microphone will be used, or participants shall be instructed to speak directly into the microphone.

(6) The hearing officer shall receive a list of witnesses and documentary evidence for the hearing no later than 5 administrative working days prior to the hearing. IIa. 300.508 (a)(3)

(7) The hearing officer may schedule a pre-hearing conference to be attended by the parties and attorneys, if applicable. Such a conference may be requested by the hearing officer, or the parties to the hearing, to simplify or eliminate issues.

(8) The hearing officer has power to issue subpoenas requiring testimony or the production of books, papers, and physical or other evidence at the hearing. I. 22.1-214.1

(a) The hearing officer may procure an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

(b) Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not question or modify the subpoena after objection thereto.

i) Rights of Parties to the Hearing IIa. 300.508

(1) Any party to a hearing shall have the right to:

(a) Be accompanied and advised by counsel and/or by individuals with special knowledge or training concerning the problems of handicapped children, without being in violation of the provisions of §54-44 of the Code of Virginia as amended.

(b) Present evidence and confront, cross-examine, and request the hearing officer to compel the attendance of witnesses.

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least 5 administrative working days before the hearing.

(d) Obtain a written or electronic verbatim record of the hearing upon request and in connection with an appeal.

(e) Receive written findings of fact and decisions rendered by the hearing officer. IIa. 300.508 (a)(5)

(f) Receive a copy of the implementation plan. IIa. 300.512 (a)

(2) The parent(s) involved in a hearing must be given the right to:

(a) Have the child who is the subject of the hearing present; and, IIa. 300.508 (b)(1)

(b) Open the hearing to the public. IIa. 300.508 (b)(2)

j) Due Process Hearing Procedure

(1) The rights of all parties to the hearing shall be protected by the hearing officer.

(2) The hearing officer shall ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing. It may be prudent to excuse witnesses after they testify, to limit the number of expert witnesses present at the same time, or to sequester witnesses during the hearing.

(3) The hearing officer shall remand the matter in dispute to a conference between the parties only when informal resolution and discussion appear to be desirable and constructive in light of new evidence not admissable in the formal hearing. This action shall not be used to delay, or deprive, the parties of their rights and shall be exercised only when the best interest of the child will be served. **IIa. 300.506**

(4) Witnesses must be seated so as to ensure that testimony is clearly recorded, either by a stenographer or recording equipment, to permit an accurate record of the proceedings.

(5) The hearing officer may require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment. **IIa. 300.503 (d)** **IIa. 300.532**

(6) The hearing officer shall ensure that the local school division has appointed a surrogate parent who is acting to protect the educational interests and **IIa. 300.514**

rights of the child when:

(a) No parent can be identified,

(b) The LEA, after reasonable efforts, cannot discover the location of the parent;

(c) The child is in legal custody of a public agency and all parental rights and responsibilities for the care and custody of the child have been terminated by Court order. **I. 22.1-283**

(7) The hearing officer, in the course of the proceedings, shall determine the following:

(a) Whether or not the requirements of notice to parents were satisfied;

(b) Whether or not the child is handicapped;

(c) Whether or not the child needs special education and related services; and

(d) Whether or not the LEA is supplying a free appropriate public education.

These determinations may or may not be central issues in the appeal but, nevertheless, are focal questions in any hearing conducted under these provisions.

(8) The hearing officer shall make no presumptions in the case and shall base his/her findings of fact and decision(s) solely upon the preponderance of the

evidence presented at the hearing and applicable state and federal laws and/or regulations.

(9) The hearing officer shall report findings of fact and decision(s) to both parties to the appeal, the LEA, and to the SEA. The SEA shall provide copies of summaries of the hearing reports to the State Special Education Advisory Committee after deleting any personally identifiable information. IIa. 300.508 (a)(5)

(10) A decision made by the hearing officer is final, unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative working days of the date of the hearing decision. IIa. 300.509

k) Administrative Review

(1) If there is an appeal of the decision of a hearing officer, the SEA shall ensure an impartial review of the hearing. The review shall be conducted by a reviewing officer who shall be appointed on a rotating basis by the SEA from a list maintained by the SEA. The SEA shall make the appointment within one (1) administrative day of the receipt of a request for a review of a due process hearing. The official conducting the review shall: IIa. 300.510 (b)

(a) Examine the entire hearing record;

(b) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(c) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, then all hearing rights as specified in this section apply;

(d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(e) Advise all parties of their right to continue to be represented by counsel whether or not the reviewing official determines that a further hearing is necessary;

(f) Make an independent decision upon completion of the review; and

(g) Give a copy of written findings and the decision(s) to the parties to the appeal, the LEA and to the SEA, in the manner prescribed.

(2) The decision made by the reviewing official is final, unless any party aggrieved by the findings and decisions of the administrative review brings civil action in any state court of competent jurisdiction or in federal district court. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence in its discretion at the request of

I. 22.1-214 (D)
IIa. 300.511

either party, and basing its decision on the preponderance of the evidence, shall grant such relief as it determines to be appropriate.

1) Timelines for Hearings and Reviews IIa. 300.512

(1) The local school board or other public agency board shall ensure that not later than 45 calendar days after the receipt of a request for a due process hearing:

(a) A final decision is rendered in the hearing, unless otherwise documented by the hearing officer; and,

(b) A copy of the decision is mailed to the parties.

(2) The SEA shall ensure that not later than 30 calendar days after the receipt of a request for a review:

(a) A final decision is rendered in the review, unless otherwise documented by the reviewing officer; and,

(b) A copy of the decision is mailed to the parties.

(3) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs a) and b) of this section at the request of either party. This action shall, in no way, be used to delay or deprive the parties of their rights and should be

exercised only when the best interests of the child will be served. Changes in hearing dates or extensions are to be noted in writing which shall be sent to all parties and to the SEA.

(4) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parent and child involved.

m) Costs of Due Process Hearing and State Review

Costs for a local hearing shall be shared equally by the LEA and the SEA. The costs shared by the SEA shall include expenses of the hearing officer (i.e. time, travel, secretarial, postal and telephone expenses), expenses incurred by order of the hearing or reviewing officer (i.e. independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e. hearing tapes and/or stenographer). The SEA shall not be liable to the LEA for expenses incurred for witnesses (except where hearing or reviewing officers subpoena witnesses on their own initiative) or for attorney's fees.

The SEA shall be responsible for all approved costs for state reviews.

n) Implementation Plan

(1) The LEA shall develop an implementation plan within thirty (30) calendar days of

concluding a due process hearing. Such plan shall be based upon the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan must state how and when the decision or agreement will be put into operation. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall include the name and position of a case manager in the LEA charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing and/or reviewing officer, and the SEA.

(2) Failure of either of the parties to comply with the implementation plan shall be reported to the SEA, for investigation and/or appropriate action.

o) Due Process File

The LEA shall maintain a file containing the following:

(1) A copy of the hearing and reviewing officer's findings of fact and decision(s);

(2) A copy of the implementation plan;

(3) A copy of the electronic or verbatim transcript of the hearing proceedings; and,

(4) A copy of all documents and exhibits presented at the due process hearing and state level review.

2. Confidentiality of Information IIa. 300.129

a) Access rights: I. 22.1-287

(1) Each LEA shall permit parents to I. 2.1-342
inspect and review any education records relating to their IIa. 300-562
children which are collected, maintained, or used by the LEA under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or educational placement of the child, or provision of a free appropriate public education, and in no case more than fourteen (14) calendar days after the request has been made.

(2) The right to inspect and review education records under this section includes:

(a) The right to a response from the LEA to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the LEA provide copies of the records containing the information, if failure to provide the copies would effectively prevent the parent from exercising the right to inspect and review the records; and,

(c) The right to have a representative of the parent inspect and review the records.

(3) An LEA may presume that both parents have the authority to inspect and review records relating to his or her child unless the LEA has been advised that both parents do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

b) Record of access

Each LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under this part. The record shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records (except access by parents and authorized employees for the LEA). IIa. 300.563

c) Records on more than one child

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information. IIa. 300.564

d) List of types and locations of information

When requested, each LEA shall provide parents with a list of the types and locations of education records collected, maintained, or used by the LEA. IIa. 300.565

e) Fees

(1) An LEA may charge parents a fee for copies of records, both cumulative and confidential, at reasonable cost, not to exceed the cost of reproduction. Such fee shall not effectively prevent the parents, or their designee, from exercising their right to inspect and review those records. However, no fee may be charged for a copy of the IEP. IIa. 300.566

(2) An LEA may not charge a fee to search for or to retrieve information under this part.

f) Amendment of record at parent's request

(1) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the LEA which maintains the information to amend the information; I. 2.1-382 (A)(5) IIa. 300.567

(2) The LEA shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request; and,

(3) If the LEA decides to refuse to amend the information, in accordance with the request, then it shall inform the parent of the refusal and advise the parent of the right to a hearing.

g) Opportunity for a Hearing

The LEA shall, on request, provide an opportunity for a hearing to enable a parent to challenge information in education records to ensure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child. IIa. 300.568

h) Result of a hearing

(1) If, as a result of the hearing, the LEA decides that the information is inaccurate, or misleading or otherwise in violation of the privacy or other rights of the child, then it shall amend the information accordingly and so inform the parent in writing; IIa. 300.569

(2) If, as a result of the hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, then it shall inform the parent of the right to place in the child's records a statement setting forth the reasons for disagreement with the decision of the LEA.

(3) Any explanation placed in the records of the child under this section must;

(a) Be maintained by the LEA as part of the records of the child as long as the record, or the contested portion, is maintained by the LEA; and,

(b) If the records of the child or the contested portion, is disclosed by the LEA to any party, then the explanation must also be disclosed to the party.

i) Hearing procedures IIa. 300.570

A hearing held under Item f shall be conducted according to the procedures under Section 99.22 of Public Law 93-380, as amended, as follows: IV. 99.22

(1) The hearing shall be held within a reasonable period of time after the LEA has received the request; and, the parent or the eligible child shall be given reasonable advance notice of the date, place, and time of the hearing;

(2) The hearing may be conducted by any party, including an official of the LEA, who does not have a direct interest in the outcome of the hearing;

(3) The parent or the eligible child shall be afforded a full and fair opportunity to present evidence relevant to the issues and may be assisted or represented by individuals of his/her choice at his/her expense, including an attorney.

(4) The LEA shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and,

(5) The decision of the LEA shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

j) Consent

(1) Parental consent must be obtained before personally identifiable information is; IIa. 300.571

(a) Disclosed to anyone other than officials of LEAs collecting or using the information under this part, subject to paragraph (b) below, or,

(b) Used for any purpose other than meeting a requirement under this part.

(2) An LEA may release information from education records to other LEAs without parental consent, unless prohibited by other applicable law.

k) Safeguards IIa. 300.572

(1) Each LEA shall protect the confidentiality of personally identifiable information during collection, storage, disclosure, and destruction. Notations in cumulative files indicating the location of a confidential file shall not contain personally identifiable information (such as "File Located in Office of Special Education Administrator").

(2) One official at each LEA shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information must receive training or instruction regarding the SEA's policies and procedures; and

(4) Each LEA shall maintain, for public inspection, a current listing of the names and positions of those employees within the LEA who may have access to personally identifiable information.

1) Destruction of Information IIa. 300.573

(1) The LEA shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child;

(2) Personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed; and,

(3) The information must be destroyed at the request of the parents; however, a permanent record of a student's name, address, telephone number, his/her grades, attendance record, classes attended, grade-level completed, and year completed may be maintained without time limitation.

Destruction of records is the best protection against improper and unauthorized disclosure; however, the records may be needed for other purposes. When informing parents about their rights under this section, the LEA should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be I. 22.1-20 destroyed, then the LEA shall retain only that information required under state law.

3. Complaint Procedure

I. 22.1-214 (E)

Complaints regarding violations of rights of parents and/or handicapped children shall be addressed to the complaint officer designated by the SEA, with the additional requirements as follows:

a) The complaint must be in writing, signed by the organization or individual filing the complaint, and contain a statement that an LEA has violated a requirement of a federal and/or state law(s) and/or regulation(s) that applies to a program.

IIb. 76.782 (a)
IIb. 76.782 (b)

b) The complaint must contain a statement of facts on which the complaint is based.

c) Upon receipt of a complaint, the SEA complaint officer shall initiate an investigation to determine whether or not the LEA against whom such complaint has been filed is in compliance with applicable law and regulations.

d) Within seven (7) calendar days of the receipt of a written, signed complaint, the SEA complaint officer shall send notification in writing to each complainant and LEA against which the violation has been alleged, acknowledging receipt of a complaint with copies to other appropriate SEA personnel. The notification sent by the SEA complaint officer shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance and/or mediation in resolving the complaint; and

(3) Request for written response to the complaint within ten (10) calendar days of the date of the letter of notification.

e) If a reply from the LEA is not filed with the SEA complaint officer within ten (10) calendar days of notice, then the SEA complaint officer shall send a second notice to the LEA advising that failure to respond within seven (7) calendar days of the date of such notice will result in the complaint being transmitted to the Superintendent of Public Instruction for action regarding appropriate sanctions.

f) Within twenty-one (21) calendar days of the receipt of a response, the SEA complaint officer shall take action as follows:

(1) Review the complaint and reply filed by the LEA to determine if further investigation or corrective action needs to be taken. If no further investigation or action is necessary, then the SEA complaint officer shall notify both parties, in writing, stating the grounds for such finding.

(2) Conduct an investigation of the complaint which shall include a complete review of all

documentation presented and may include an independent on-site investigation, if necessary.

(3) Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

(4) Make a determination of compliance or non-compliance based upon the facts and applicable law and notify the parties, in writing, of the findings and the basis for such findings. A time limit of sixty (60) calendar days shall be allowed, after the written complaint is received, to carry out the investigation and to resolve the complaints. IIb. 76.781 (a)

(5) Report findings of non-compliance and corresponding recommendations to the Associate Superintendent for Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

g) The Associate Superintendent for Instruction shall report recommendations for action to the Superintendent of Public Instruction for all complaints received from the SEA complaint officer.

h) The Superintendent of Public Instruction shall take formal action within five (5) calendar days of receiving recommendations from the Associate Superintendent for Instruction or the SEA complaint officer and notify the parties in writing of such actions and the specific steps which must be taken by the LEA to bring it into compliance.

The LEA will be given ten (10) calendar days from the date of notice of non-compliance to respond and initiate voluntary corrective action.

i) Where the LEA develops a plan of action to correct the violations, such plan shall include timelines and a description of all changes contemplated and shall be subject to approval of the SEA.

j) If the LEA does not come into compliance within the period of time set forth in the notification, then the matter will be referred by the Superintendent of Public Instruction to the Board of Education for a hearing.

k) If the Superintendent of Public I. 22.1-214
Instruction, after reasonable notice and opportunity for a (E)
hearing by the Board of Education, finds that the LEA has IIb. 76.780
failed to comply with applicable laws and regulations, and IIb. 76.783
determines that compliance cannot be secured by voluntary means, then he/she shall issue a decision in writing stating that state and federal funds for the education of handicapped children shall not be made available to that LEA until there is no longer any failure to comply with the applicable law and/or regulation.

l) Parties to the complaint procedure shall IIb. 76.781
have the right to request the United States Secretary of (c)
Education to review the final decision of the Superintendent of Public Instruction.

D. Requirements for Establishing Surrogate Parent Procedures for Local School Divisions and Applicable State Agencies and Institutions

1. Role of Surrogate Parents

The surrogate parent requirement in both state and federal laws and regulations is intended to ensure appropriate decision making in educational matters. In Virginia, the surrogate parent is an advocate acting to serve the best educational interests of a child who is suspected of being or is determined to be handicapped. State and federal regulations require that the surrogate parent represent the child in all matters relating to:

a) The identification, evaluation, or educational placement of the child; or, **IIa. 300.514 (e)**

b) The provision of a free appropriate public education to the child.

2. Appointment of Surrogate Parents

a) Children (ages 2 to 21, inclusive), suspected of being or determined to be handicapped, whose parents are uncooperative or unresponsive are not, on this basis alone, eligible for surrogate parents.

A child who is suspected of being or determined to be handicapped, whose natural parent(s) or guardian(s) have allowed relatives or private individuals to act as parents to the child, do not require a surrogate parent.

A surrogate parent shall be appointed for a child, ages 2 to 21, inclusive, who is suspected of being or determined to be handicapped when:

(1) No parent can be identified; or

(2) The LEA, after reasonable efforts, cannot discover the location of a parent; or, IIa. 300.514 (a)

(3) Legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by Court order. (See Glossary for definition of "Ward of the State").

b) Each LEA shall establish procedures for identifying children in its jurisdiction who are in need of surrogate parents, according to the definition above. IIa. 300.514 (b)

c) Each LEA shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the LEA superintendent or designee. IIa. 300.514 (b)

d) The appointment having been effected the LEA shall notify in writing:

(1) The handicapped child (ages 2 to 21, inclusive), as appropriate to the handicap;

(2) The surrogate parent-appointee;

(3) The person charged with responsibility for the child;

(4) The public agency charged with responsibility for the child, when the child is a ward of the State (See Glossary for definition of "Ward of the State");

(5) The SEA.

NOTE: LEAs are required to send parents' copy of notice to child's guardian and/or custodial state agency. In instances where the LEA has not been able to locate the present whereabouts of the parent(s), a letter to the parents' last known address is evidence of the LEA's good faith effort to effect this requirement.

e) The surrogate parent shall serve during, or for the duration of, the school year for which he/she is appointed.

(1) When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of that current document.

(2) Should a child require the services of a surrogate parent during the summer months, the LEA shall extend the appointment as needed, consistent with timelines required by law.

f) At the conclusion of each school year appointment of surrogate parents shall be renewed or not renewed following a review by the LEA.

g) Each LEA shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before his/her appointment has expired. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows;

(1) The child reaches the age of majority (except those persons who are of the age of majority but who are determined to be legally dependent and subject to a guardianship);

(2) The child is found to be no longer eligible for special education services (except when termination of special education services is being contested);

(3) Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent;

(4) A parent, who was previously unknown or unavailable, is now known or available; or

(5) The appointed surrogate parent is no longer eligible (see "Qualifications for Surrogate Parent," Section 4, for eligibility criteria).

Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment.

3. Identification and Recruitment of Surrogate Parents

a) The LEA shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents.

It may be necessary for LEAs to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. It should be noted, however, that geographic proximity is essential to the surrogate parent/handicapped child relationship.

b) Individuals who are not on the LEA list may be eligible to serve as surrogate parents, subject to the LEA's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the LEA's determination of surrogate eligibility. Other factors which warrant the LEA's attention are as follows:

(1) Consideration of the appointment of a relative to serve as surrogate parent;

(2) Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;

(3) Consideration of the appointment of a qualified person of the same racial, cultural, and

linguistic background as the child who is suspected of being or has been identified as being handicapped; and,

(4) The appropriateness of the child's participation in the selection of his/her surrogate parent.

4. Qualifications of Surrogate Parents **IIa. 300.514 (c)(2)**

Each LEA shall ensure that a person appointed as surrogate:

a) Has no interest that conflicts with the interest of the child he/she represents;

b) Has knowledge and skills that ensure adequate representation of the child;

The prospective surrogate parent must have completed an SEA approved training session prior to representing the child.

c) Is not an employee of a public agency which is involved in the education or care of the child; **IIa. 300.514 (d)(1)**

d) Is an adult and legal citizen of the United States; and,

e) Resides in the same general geographic area as the child, whenever possible.

5. Rights of Surrogate Parents

The surrogate parent, when representing the child's educational interests, has the same rights as those accorded to parents of children determined or suspected to be handicapped, as follows:

a) To inspect and review all the child's education records upon request. **IIa. 300.562**

b) To challenge the accuracy of information in the child's record. **IIa. 300.567-570**

c) To provide written consent before the LEA may proceed in: **IIa. 300.504**

(1) Pre-placement evaluations;

(2) Initial placement of the handicapped child in a program providing special education and/or related services;

(3) Any changes in the identification, evaluation, or educational placement of the handicapped child.

As in the case of natural parents, surrogate parents retain the right to question the appropriateness of the child's educational program and placement in situations as follows:

(a) When the identified handicapped child has already been placed prior to the surrogate parent appointment; or,

(b) When the placement or IEP appears to be different from that to which the surrogate parent gave consent.

d) To request an independent evaluation of the child at public expense. **IIa. 300.503**

e) To be informed by the LEA of any low-cost legal and other relevant services available in the area when: IIa. 300.506 (c)

(1) He/she requests such information; or,

(2) A hearing is initiated by either party.

f) To receive all communications from the LEA, including notice and request for consent, in the native language of the home and in a manner understandable to the general public, and IIa. 300.505

g) To all procedural safeguards attendant to due process hearings, including: IIa. 300.508

(1) The right to present evidence;

(2) The right to confront, cross-examine, and compel the attendance of witnesses;

(3) The right to have the child present at an impartial due process hearing;

(4) The right to have the impartial due process hearing open to the public; and,

(5) The right to receive formal written notice of the decision(s) rendered by the hearing and review officers.

6. Responsibilities of Surrogate Parents

a) Representing the child in all matters relating to the identification, evaluation and educational placement and the provision of a free appropriate public education, the surrogate parent assumes responsibilities as follows:

(1) To act in place of a parent for the child concerning his/her educational program;

(2) To receive the notice(s) and give(s) or refuse(s) consent to evaluation and/or placement of the child;

(3) To attend planning conferences to develop an IEP; and,

(4) To be familiar with appropriate procedures for due process, confidentiality, and access to the child's records.

b) The surrogate parent is required to have the knowledge and skills to execute these responsibilities. The LEA shall develop procedures which ensure that the above requirement is satisfied.

7. Responsibilities of LEAs

a) The LEA shall establish and implement procedures for the assignment of an individual to serve as surrogate parent acting on behalf of the child in educational matters, including a method for each of the following: **IIa. 300.514**

(1) Determining whether a child needs a surrogate parent;

(2) Assigning a surrogate parent to the child;

(3) Changing the assignment of a surrogate parent; and,

(4) Terminating the assignment of a surrogate parent to the child.

b) The LEA shall recruit volunteers to serve as surrogate parents.

c) The LEA shall provide training, at least annually, for surrogate parents to ensure that they possess knowledge of special education and related services for handicapped children, as well as knowledge of the legal requirements necessary to represent the children effectively.

d) The LEA shall ensure that surrogate parents are accorded the same rights as parents when representing the educational interests of the children they are appointed to serve.

e) The LEA shall review the assignment of surrogate parents annually to determine:

(1) Whether the child continues to require a surrogate parent; and,

(2) Whether the surrogate parent has represented the child's best educational interests.

E. Administration and Governance

1. Plans, Applications, and Reports

a) Each LEA is required to prepare and I. 22.1-7
submit to the appropriate state authority the following: I. 22.1-215

(1) To the SEA, by such date as the Board may specify, an acceptable annual update of the six-year plan for special education programs which:

(a) Specifies plans for IIa. 300.180
providing a free appropriate education and related services to all handicapped children for the following year; and

(b) Reports on the extent to which the plan for the preceeding year has been implemented.

(2) To the SEA, an application for IIa. 300.180
funding under Part B of Public Law 94-142 as amended by Public Law 98-199 or Public Law 89-313 as amended by Public Law 93-380, containing assurances of compliance in accordance with various procedures outlined by the SEA.

b) Each LEA shall include the following provisions and assurances in the annual update of the six-year plan for special education programs and the application for funding:

(1) A free appropriate public I. 22.1-215
education will be available for each handicapped child, ages 2 to 21, inclusive.

(2) All children, ages 2 to 21, IIa. 300.121
inclusive, residing in the LEA who are handicapped and need (a)
special education and related services are identified, IIa. 300.128
located, evaluated, and placed in an appropriate educational IIa. 300.220
program.

(3) Handicapped children and their parents or guardians are guaranteed procedural safeguards in the process of identification, evaluation, or educational placement, or the provision of a free appropriate public education. IIa. 300.131 IIa. 300.237

(4) To the maximum extent appropriate, handicapped children will be educated with children who are not handicapped. IIa. 300.132 IIa. 300.227

(5) Confidential records of handicapped children shall be properly maintained. IIa. 300.129 IIa. 300.221

(6) Testing and evaluative materials used for the purpose of classifying and placing handicapped children are selected and administered so as not to be racially or culturally discriminatory. IIa. 300.133

(7) An individualized education program will be maintained for each handicapped child. IIa. 300.130 IIa. 300.235

(8) A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the needs of the handicapped is provided. IIa. 300.139 IIa. 300.224

(9) There will be on-going parent consultation. IIa. 300.137 IIa. 300.226

(10) A full educational opportunity goal is provided for all handicapped children, from birth to age 21, inclusive, including appropriate career education, IIa. 300.123

pre-vocational education, and vocational education.

(11) Handicapped children must be given the right of participating in the Minimum Competency Testing (MCT) program.

c) Each LEA shall make the plan, the application, and all related documents available to parents and the general public, at least 30 calendar days before adoption by the local school board or appropriate authorities. Such notice shall be published or announced in newspapers and other media and procedures shall be established to provide individuals an opportunity to respond to these documents.

d) Each LEA shall also ensure that all required special education plans, applications, reports, and program evaluations are public information.

2. Personnel Development

Each LEA shall establish a program and procedures for the development and implementation of a comprehensive system of personnel development which shall include: **IIa. 300-380**

a) In-service training for all general and special education instructional, related services, and support personnel; and

b) Procedures to ensure that all personnel who are responsible for the instructional programs or delivery of related or support services to handicapped children are properly certified and endorsed.

3. Local Advisory Committee

a) There shall be a local advisory committee for special education appointed by each local school board to advise the school board through the division superintendent.

b) School division personnel shall serve only as consultants to the committee.

c) The functions of the local advisory committee shall be as follows:

(1) Advise the school division of unmet needs in the education of handicapped children;

(2) Assist the local school division in the formulation and development of long-range plans designed to provide needed educational services for handicapped children;

(3) Participate in the development of priorities and strategies for meeting the identified needs of handicapped children;

(4) Submit periodic reports and recommendations regarding the education of handicapped children to the division superintendent for transmission to the local school board; and

(5) Assist the local school division in interpreting plans to the community for meeting the special needs of handicapped children for educational services.

d) Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.

e) Committee meetings shall be held at least quarterly and shall be open to the public.

f) Public notice of each meeting shall be made at least two weeks prior to the date of the meeting.

g) One meeting shall be designated specifically for the review of the updated annual special education six-year plan and the application for federal funding 30 calendar days prior to submission to the local school board.

4. Regional Programs

a) Where it becomes necessary for local school divisions to develop regional or cooperative programs to serve their handicapped children, such regional programs shall be provided in accordance with least restrictive environment requirements.

b) Where local school divisions elect to participate in 60% reimbursement of costs established by the Board of Education for the provision of special education and related services for certain handicapped children, a Joint Board shall be established to manage and control the jointly owned or operated program, center or school. Establishment of the Joint Board, and administration of the jointly operated program shall be conducted in accordance with the provisions of Chapter I (Bylaws and Regulations of the Board of Education of the Commonwealth of Virginia), Jointly Owned and Operated Schools and Jointly Operated Programs.

c) The annual update of the six-year plan for special education programs of each LEA participating in a regional program shall contain a description of its program, activities and supervisory involvement as prescribed by the SEA.

Each Joint Board may submit a composite annual update of the six-year plan for special education programs which is composed of excerpts from each of the participating LEAs.

d) Each Joint Board shall appoint a qualified director who shall be the administrative head of the cooperative unit. The director shall be responsible for the administration of programs and services which are approved by the governing body.

F. Funding

1. Reimbursement to Local School Divisions and State-Operated Programs

State and federal funds administered by the SEA are disbursed to local school divisions and state-operated programs in accordance with the following requirements:

a) Compliance with regulations of the Board of Education;

b) Education programs for the handicapped shall be operated pursuant to an approved annual update of the six-year plan for special education programs;

c) Special education teachers, speech pathologists, school psychologists, visiting teachers, school social workers, and supervisors of special education shall meet fully the Board of Education certification and endorsement requirements for such employment;

d) Class enrollments and case loads shall not exceed the maximum number of handicapped children as specified by the SEA.

e) Where unusual or extenuating circumstances exist, the LEA may apply to the Superintendent of Public Instruction for an exception to the regulations. Such requests shall be supported by sufficient justification.

f) All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement will be prorated accordingly.

2. State Funds

State funds to assist local school divisions with the cost of providing special education and related services for handicapped children are provided through the SEA's appropriation as follows:

a) Handicapped children of school age, 5 to 21, inclusive, enrolled in programs operated by a local school board:

(1) Day school programs

For each handicapped child enrolled on December 1 of the prior year, a local school division is entitled to receive the state share of the required Standards of Quality (SOQ) expenditure in addition to a per pupil amount for each type of exceptionality as established by the SEA.

(2) Homebound instruction

Each eligible child in average daily membership (ADM) is entitled to receive the state share of the required Standards of Quality (SOQ) expenditure; in addition, reimbursement is available for 60 percent of an established hourly rate for teachers employed to provide such instruction. Such rate shall be determined annually.

(3) Vocational education programs for the handicapped

Funding is available for vocational personnel employed during the first two years of special vocational projects for the handicapped; equipment costs for such programs are based on a formula provided by the SEA; application for special vocational projects for the handicapped shall be submitted to the SEA.

(4) Transportation

Handicapped children, ages 2 to 21, inclusive, transported on approved school buses or on public transit buses to public schools or approved private schools pursuant to their IEPs are funded in accordance with pupil transportation regulations.

b) Sixty percent of the actual cost up to annually established maximum amounts, is available to assist local school boards with the operation of their pre-school center-based and home-based programs for handicapped children of preschool age (below age 5).

c) Handicapped children enrolled in regional special education programs:

(1) Reimbursement is available for 60 percent of the tuition costs not to exceed 60% of the maximum rate established by the Board of Education for regional special education programs operated by a Joint Board, or for LEAs operating a residential program accepting eligible handicapped children from other local school division(s) who are:

(a) Severely and profoundly handicapped (including autistic)

(b) Seriously emotionally disturbed

(2) Such reimbursement shall be in lieu of the per pupil basic operation cost and other state aid otherwise available for each child. Decisions regarding the determination of reasonable tuition costs and other reasonable charges may be appealed to the Interdepartmental Committee on Rate-Setting for Children's Facilities.

d) Handicapped children enrolled in approved private nonsectarian schools for the handicapped:

(1) Reimbursement for sixty percent of the tuition cost not to exceed 60% of the maximum rate established by the Board of Education, is available for special education and related services for eligible handicapped children attending private non-sectarian schools approved by the Board of Education. The maximum rate set by the Board for any facility may be appealed to the Interdepartmental Committee on Rate-Setting for Children's Facilities.

(2) When the LEA is unable to provide an appropriate educational program for a handicapped child, and determines that the appropriate placement for the child is in an approved private non-sectarian school for the handicapped, the LEA is responsible for the cost of the placement.

(3) When the local Departments of Social Services or the Department of Corrections places a handicapped child in an approved private residential nonsectarian school for the handicapped for reasons other than educational purposes, the LEA shall be responsible for payment of appropriate educational costs. Such costs are reimbursable from the SEA. I. 2.1-701

(4) Reimbursement for handicapped children placed in foster care shall be made in accordance with procedures established by the SEA.

(5) When a parent unilaterally places a handicapped child in an approved private nonsectarian school for the handicapped, the LEA shall not be responsible for the cost of the placement.

e) Training of special education personnel:

(1) Traineeship loans are available to persons who are interested in working with programs for the education of handicapped children to qualify them as special education personnel in the LEAs, as special education teachers, special education supervisors, visiting teachers, school social workers, school psychologists, or speech pathologists. Applicants for such traineeships shall be graduates of a recognized college or university and must meet eligibility requirements set by the Board of Education.

(2) Funds may be available on a competitive basis to assist local school divisions with the implementation of in-service training relating to the needs of handicapped children.

3. Federal Funds

a) Federal funds are available under Part B of Public Law 94-142, as amended, to assist local school divisions with the excess cost requirements when providing special education and related services for handicapped **IIa. 300.182-186** children ages 2 to 21, inclusive. The application for such funds is submitted to the SEA according to applicable federal requirements.

b) In order to qualify for Part B funds, a local school division must spend as much in state and local funds on handicapped children as on nonhandicapped children.

c) Part B funds may not be used to supplant state and local expenditures for special education and related services. **IIa. 300.230**

d) The entitlement of Part B funds for each local school division is based upon the unduplicated number of handicapped children certified by the division superintendent as receiving special education and related services on December 1 of the prior year.

e) Handicapped children transferred from State Operated Programs to local school divisions may be served with funds applied for in accordance with the provisions of Pulic Law 89-313, as amended. However, no child included in the count for Public Law 94-142, as amended, is eligible to be counted for funding under Public Law 89-313, as amended.

4. Funds to Assist with the Education of Handicapped Residing in State-Operated Facilities

a) Children in State Mental Health Facilities

State funds for special education and related services for children in state mental health facilities are derived from the state special education appropriation and from a state basic-aid fund transfer from each local school division having children in residence. Also, federal funds are available under the provisions of Public Law 89-313, as amended.

b) Children in State Training Centers for the Mentally Retarded

State funds for special education and related services for children in state training centers for the mentally retarded are derived from the Department of Mental Health and Mental Retardation and from a state basic aid transfer from each local school division having children in residence. Also, federal funds are available under the provisions of Public Law 89-313, as amended.

c) Children in Short-Term Medical Facilities

State funds are provided for special education and related services in the special education appropriation. In addition, federal funds are available under the provisions of Public Law 89-313, as amended.

d) Children in Woodrow Wilson Rehabilitation Center

State funds for special education and related services are derived from the special education appropriation. In addition, federal funds are available under the provisions of Public Law 89-313, as amended.

e) Children in Regional Juvenile Detention Homes

State funds for special education services are available from the special education appropriation.

f) State-Operated Diagnostic Clinics.

State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the State Health Department are derived from the special education appropriation.

g) Rehabilitative School Authority

State funds for the education of children, including handicapped children, are appropriated to the Rehabilitative School Authority for the education of all children residing in state operated correctional facilities. In addition, federal funds are available under the provisions of Public Law 94-142, as amended.

5. Funding, Withholding, and Recovery of Funds

a) The SEA shall disburse funds to LEAs for the education of handicapped children (ages 2 to 21, inclusive) when they provide documentation of compliance with state and federal laws and regulations.

b) Where documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall notify the LEA that state and federal funds will not be available for reimbursement for special education programs and services.

(1) The notification shall include the substance of the alleged violation, and the LEA shall be given an opportunity to submit a written response; and,

(2) The LEA shall have the right to appeal to the Board of Education under section 6 of this part.

c) If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under Section 6 of this part, finds that an LEA has failed to comply with the Board of Education regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent shall issue a decision in writing stating that state and federal funds for the education of handicapped children shall not be made available to that LEA until it complies with the Board of Education regulations.

d) Where there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the LEA, the foregoing due process procedures shall apply.

e) Where it is determined that such funds have been erroneously claimed, the SEA shall bill the LEA for the amount of funds improperly received or withhold an equal amount of state or federal funds for the following year.

6. Appeal of Administrative Decision

a) The SEA recommendation to disapprove an LEA annual update of the six-year plan for special education programs or to withhold special education funds may be appealed by an LEA.

b) The procedures for the appeal of administrative decisions are as follows:

(1) The LEA must request, in writing, a hearing by the SEA within 30 administrative working days from the receipt of notification from the Superintendent of Public Instruction.

(2) Within 10 administrative working days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the LEA in writing of the date, time, and location of the hearing;

(3) The hearing shall transpire within 15 administrative working days from the date of notification;

(4) The hearing board shall be composed of the following persons:

(a) Two persons from the SEA who were not participants in the contested decision; these persons shall be appointed by the Superintendent of Public Instruction; and,

(b) Two members of the State Special Education Advisory Committee to be appointed by the chairman of the committee;

(5) Witnesses and attorneys may be present and testify for the SEA or the LEA;

(6) A written or electronic verbatim record shall be kept of all proceedings of the hearing;

(7) The hearing board shall review all pertinent evidence presented and shall make a written recommendation to the Board of Education which will render a decision; and,

(8) The decision made by the Board of Education is final, unless a party appeals to a state court of competent jurisdiction or federal district court.

III. RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND INSTITUTIONS FOR EDUCATION AND TRAINING OF CHILDREN IN RESIDENCE OR CUSTODY

A. Each State Board, Agency, and Institution having children in residence or in custody shall provide education and training to such children which is comparable to that which would be provided to such children in a local school division.

B. The responsible State Board, Agency, or Institution shall provide such education and training either directly with its own facilities and personnel in cooperation with the Board of Education or under contract with a local school division or any other public or approved private nonsectarian school for the handicapped.

If any child in the custody of any State Board, I. 22.1-218
Agency, or Institution is a handicapped child, and such Board, Agency, or Institution must contract with a private nonsectarian school for special education for such child, the Board, Agency, or Institution may proceed as a guardian of such child.

C. Each State Board, Agency, and Institution having responsibility for providing such education and training shall submit annually to the SEA for approval by the Board of Education its program for the education and training for all children in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Board of Education, shall include the following provisions and assurances:

1. A free appropriate public education will be I. 22.1-215
available for each handicapped child, ages 2 to 21, inclusive.

2. All children, ages 2 to 21, inclusive, who IIa. 300.121
are handicapped and need special education and related (a)
services are identified, located, evaluated, and placed in an IIa. 300.128
appropriate educational program. IIa. 300.220

3. Handicapped children and their parents are IIa. 300.131
guaranteed procedural safeguards in the process of IIa. 300.237
identification, evaluation, educational placement, or the

provision of a free appropriate public education. (See Section IIC, Procedural Safeguards).

4. To the maximum extent appropriate, IIa. 300.132
handicapped children will be educated with children who are IIa. 300.227
not handicapped.

5. Confidential records of handicapped children IIa. 300.129
shall be properly maintained.

6. Testing and evaluative materials used for the IIa. 300.133
purpose of classifying and placing handicapped children are selected and administered so as not to be racially or culturally discriminatory.

7. An individualized education program will be IIa. 300.130
maintained for each handicapped child. IIa. 300.235

8. A comprehensive system of personnel IIa. 300.139
development to include the in-service training of general and IIa. 300.224
special education instructional and support personnel related to the needs of the handicapped is provided.

9. There will be on-going parent consultation. IIa. 300.137

10. Each suspected or identified handicapped IIa. 300.226
child, ages 2 to 21, inclusive, shall have a surrogate parent assigned when the parent(s) cannot be identified or located, the child is in the legal custody of the State, or all parental rights and responsibilities for the child have been terminated by Court order. (See Section IID, Surrogate Parent Procedures).

11. A full educational opportunity goal is provided for all handicapped children, from birth to age 21, inclusive, including appropriate career education, pre-vocational education, and vocational education. IIa. 300.123

12. Handicapped children must be given the right of participating in the Minimum Competency Testing (MCT) program and the IEP must note that the MCT has been presented and objected to or accepted at the appropriate time.

13. Educational objectives of the State Board, Agency, or Institution are clearly stated in the program plan.

14. Strategies for achieving the educational objectives of the State Board, Agency, or Institution are included in the program plan.

15. A system of communication between education and other personnel, including treatment and residential care staff, is provided which ensures:

a) Coordination of program objective(s);

b) Continuity of service(s) in the transition of a child into the educational program of the facility;

c) Subsequent utilization of other educational programs, where applicable;

d) Receipt of services from other agencies, where applicable; and

e) Employment of children, where applicable.

16. A copy of the policy manual for educational employees of the State Board, Agency, or Institution is included in the program plan.

D. Programs of education for children served by State Boards, Agencies, and Institutions shall be designed to aid each child, consistent with his/her abilities, interests and educational needs, to:

1. Develop competence in the basic learning skills:

2. Progress on the basis of achievement;

3. Qualify for further education, training, and/or employment;

4. Develop ethical standards of behavior and participate in society as a responsible citizen;

5. Develop a positive and realistic concept of self and others;

6. Endeavor to enhance the beauty of the environment and every day life; and

7. Practice sound habits of personal health.

E. Each State Board, Agency, and Institution shall maintain an up-to-date policy manual for educational employees which shall include:

1. A system of communciation between the State Board, Agency, or Institution and its employees whereby the

views of all educational employees may be received in an orderly and constructive manner in matters of concern to them;

2. A cooperatively developed procedure for the evaluation of educational personnel; and

3. The grievance procedures regarding educational personnel as prescribed by the State.

F. All children, ages 2 to 21, inclusive, residing in State Operated Programs, requiring special education and related services, shall have been identified, evaluated and educationally placed in accordance with State Regulations (See Section II, Responsibilities of School Divisions and State Agencies), and shall meet the following requirements:

1. The identification process shall include formal assessment involving at least the following components (See Section IIA7, Assessment Components):

a) A current medical evaluation;

b) A current psychological evaluation;

c) A current sociocultural evaluation;

d) A current educational evaluation.

These assessment components shall be updated in accordance with State Regulations (See Section IIB1g, Re-Evaluation).

2. Testing and evaluative materials utilized for the purpose of classification and educational placement of handicapped children shall be selected and administered so as not to be racially or culturally discriminatory.

3. An IEP shall be developed and implemented for each educationally handicapped child in accordance with State Regulations (See Section IIB2, Individualized Education Program).

4. Program options shall be provided for each individual and group of students comparable to those offered in public day schools consistent with their age, ability, and unique educational needs. A description of the program as approved by the Board of Education shall be kept on file.

5. Each State Board, Agency, and Institution shall ensure an annual evaluation of the educational program to determine the extent to which the objectives have been achieved and to make recommendations for program modification of such plan.

G. Each State Board, Agency, and Institution shall ensure that educational programs are provided in accordance with the following provisions:

1. At least 5 1/2 hours of education/training per school day or 27 1/2 per school week is available for each student.

2. A waiver statement is on file for each student whose medical or physical condition requires modification of the school schedule. This waiver statement shall document the physical or mental condition of the individual student which requires significant modification of this schedule, and there shall be on file statements of

concurrence by the principal, supervisor or educational director and other personnel as follows:

a) Mental Health and Mental Retardation Facilities - attending physician;

b) Rehabilitative School Authority - treatment team;

c) School for the Deaf and the Blind - physician, staffing committee and principal;

d) Woodrow Wilson Rehabilitation Center - Center counselor upon recommendation of the staffing committee.

3. The facility shall maintain an acceptable pupil-teacher ratio not to exceed:

a) Emotionally disturbed - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children;

b) Hearing impaired - 1 teacher for every 7 children with 1 aide for every 3 classroom teachers;

c) Mildly or moderately retarded - 1 teacher and 1 aide for every 10 children;

d) Severely and profoundly retarded - 1 teacher and 1 aide for every 6 children or 1 teacher and 2 aides for every 10 children;

e) Visually impaired - 1 teacher for every 7 children with 1 aide for every 3 classroom teachers;

f) Other health impaired - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children;

g) Orthopedically handicapped - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children;

h) Specific learning disabled - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children.

4. A ratio of instructional personnel to non-educationally handicapped children shall be maintained as follows:

a) Rehabilitative School Authority - no greater than an average of 1 teacher and 1 aide for every 10 children;

b) Woodrow Wilson Rehabilitation Center - no greater than an average of 1 teacher for every 10 children

c) Each State School for the Deaf and the Blind - ratios as required by the Board of Education accreditation standards.

5. Children shall be served with age-appropriate peers.

6. Each facility shall have available adequate and appropriate classroom space, library, and instructional materials and supplies to meet the educational needs of the children.

H. Program personnel must meet the following requirements:

1. Personnel administering school programs and providing direct services to educationally handicapped and non-handicapped children must meet Board of Education certification and endorsement requirements for their assignment.

2. Teachers providing instruction for handicapped children at the secondary level must be endorsed in the appropriate subject matter and, in addition, have earned a minimum of nine semester hours toward specific endorsement requirements for the appropriate area of exceptionality.

3. Other professional personnel for whom the Board of Education has not established certification requirements must meet State of Virginia licensure requirements.

4. Teacher aides must be high school graduates or equivalent.

5. All educational, vocational, and related services personnel shall receive orientation and ongoing inservice training related to the educational needs of the handicapped to be provided by the facility pursuant to a comprehensive system of personnel development.

IX. GLOSSARY

Age of Eligibility means all eligible handicapped children who have not graduated from a secondary school or completed a program approved by the Board of Education and who are mentally retarded, physically handicapped, seriously emotionally disturbed, speech and language impaired, hearing impaired, visually impaired, autistic, multihandicapped, severely and profoundly handicapped, have a specific learning disability, or who are otherwise handicapped as defined by the Board of Education; who, because of such impairments, are in need of special education, whose second birthday falls on or before September 30, and who have not reached their twenty-second birthday on or before September 30. **IIa. 300.5(a)**

Audiology means: IIa. 300.13 (b)(1)

1. Identifying and evaluating children with hearing loss;

2. Determining the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing;

3. Selecting and fitting an appropriate aid and evaluating the effectiveness of amplication; and

4. Counseling and guidance of pupils and parents regarding hearing loss.

Autism means a behaviorally defined syndrome; the essential functions are typically manifested prior to 30 months of age and include disturbances of:

1) Developmental rates and/or sequences;

2) Responses to sensory stimuli; and

3) Speech, language, and cognitive capacities and capacities to relate to people, events and objects.

Child means any person who shall not have reached his/her twenty-second birthday by September 30 of the current year. **I. 22.1-213**

Comprehensive Programs and Services are defined as educational programs and support services which are required to provide a free appropriate educational program in the least restrictive environment to every handicapped child ages 2 to 21, inclusive, in each local school division or other public agencies responsible for providing educational services to handicapped children and youth.

Consent means: **IIa. 300.500**

1) The parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication;

2) The parent understands and agrees, in writing, to the carrying out of the activity for which his or her consent is sought and the consent describes that activity and lists the records (if any) which will be released and to whom; and,

3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked any time.

Counseling Services means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. **IIa. 300.13 (b)(2)**

Days, unless specified as "calendar days," means administrative working days, exclusive of Saturdays, Sundays, and officially designated holidays of the local school division. Calendar Days mean consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the school division level. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this procedure shall be extended to the next day not a Saturday, Sunday, or school holiday.

Deaf means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance. **IIa. 300.5 (b)(1)**

Deaf-Blind means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children. **IIa. 300.5 (b)(2)**

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. **IIa. 300.560**

Direct Services means services provided to a handicapped child by the state directly, by contract, or through other arrangements. **IIa. 300.370**

Disclosure means permitting access or the release, transfer, or other communication of education (scholastic) records of the student or other personally identifiable information contained therein, by any means to any party.

1. Disclosure, through access, means the right to review, inspect, and copy.

2. Disclosure, through release, means the surrender of specific information, orally, in writing, or electronically, upon receipt of a valid request.

3. Disclosure, through transfer, means to surrender the entire record when transfer occurs within a local school division. It may also mean the surrender of a transcript of the record when transfer occurs between local school divisions, between local school divisions and postsecondary institutions or another educational agency or institution.

Early Identification means the implementation of a formal plan for identifying a disability as early as possible in a child's life. **IIa. 300.13 (b)(3)**

Education Records are defined as records, files, documents, and other materials which contain information directly related to a child and are maintained by an educational agency or institution or by a person acting for such agency or institution. Such information or data may be **IIa. 300.560** recorded in any medium including, but not limited to, handwriting, print, tapes, film, microfilm, and microfiche. Such records are classified in two categories:

Category I (Cumulative)

Continuous and current records of significant factual information regarding the personal and educational progress of individual children as they go through school.

Category II (Confidential)

Reports written by pupil personnel service workers of the local school division for the express use of other professionals within the local school division; appropriate confidential information from the records of such cooperating individuals or agencies as psychiatrists, child welfare agencies, hospitals, or juvenile courts; and other confidential information.

Eligible Student means a student who is 18 years of **III. 99.2**
age or is attending an institution of postsecondary education. The permission or consent required of and the rights accorded to parents relative to scholastic records shall be accorded said students.

Evaluation means procedures used to determine whether **IIa. 300.500**
a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered or

procedures used with all children in a school, grade, or class.

Federal Financial Assistance means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property. **IIc. 104.3(h)**

Financial Aid means payment of funds provided to an individual or a payment in kind of tangible or intangible property to an individual which is conditioned on the individual's attendance at an educational agency or institution.

Free Appropriate Public Education (FAPE) means special education and related services which: **IIa. 300.4**

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the state educational agency;
3. Include preschool, elementary school, secondary school, or vocational education; and,
4. Are provided in conformity with an individualized education program.

FAPE is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under Section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met . . . ." Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

Handicapped Children means those children evaluated, in accordance with these regulations, as being mentally retarded, hard of hearing, deaf, speech and language impaired, autistic, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, severely and profoundly handicapped, multihandicapped, or have specific learning disability, who, because of these impairments, need special education and related services. **IIa. 300.5(a)**

Hard of Hearing means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section. **IIa. 300.5 (b)(3)**

Impartial Hearing Officer means a person, selected from a list maintained by the SEA. **IIa. 300.507 (a)(b)**

An impartial hearing officer must:

1. Be a member of the Virginia Bar and approved by the Office of the Attorney General;

2. Attend required training sessions;

3. Adhere to timelines attendant to due process hearings;

4. Adhere to SEA and any other applicable due process policies and procedures;

5. Be unbiased -- not prejudiced for or against any party involved in the hearing;

6. Be disinterested -- not having any interest in the outcome; and

7. Be independent -- not an officer or agent of the LEA or the SEA.

(Note: A person who otherwise qualifies to serve as a hearing officer is not an employee of the agency solely because he/she is paid by the agency to serve in this capacity.)

Implementation Plan means the plan developed by the LEA designed to operationalize the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan shall include the name and position of the individual in the school division charged with the implementation of the decision (case manager) as well as the date for effecting such plan.

Independent Educational Evaluation (IEE) means an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the child in question. Whenever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and **IIa. 300.503** the qualifications of the examiner(s), must be the same as the criteria the public agency uses when it initiates an evaluation. An independent educational evaluation may incorporate part or all of the four core evaluations utilized for determining eligibility in Virginia.

Individualized Education Program (IEP) means a written statement for each handicapped child developed in any meeting by a representative of the LEA who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents of such child, and whenever appropriate, such child, which statement shall include: IIa. 300.340

1. A statement of the present levels of educational performance of such child;

2. A statement of annual goals, including short-term instructional objectives;

3. A statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs;

4. The projected date for initiation and anticipated duration of such services; and,

5. Appropriate objective criteria and evaluation procedures and schedules for determining, at least on an annual basis, whether instructional objectives are being achieved.

In-Service Training means training other than that received by an individual in a full-time program which leads to a degree. IIa. 300.382

Local Educational Agency (LEA) means the local school division or other public agencies responsible for providing educational services to handicapped children and youth. IIa. 300.7(c) IIa. 300.8(b)

Least Restrictive Environment (LRE) means that educational setting for handicapped children which, to the maximum extent possible, provides for education and supplementary aids/services necessary to the handicapped child's special needs, in settings comparable to, but not separate from, those provided children who are not handicapped unless the nature or severity of the handicap requires such separation. IIa. 300.550

Medical Services mean services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services. IIa. 300.13 (b)(4)

Mentally Retarded means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance. IIa. 300.5 (b)(4)

Multihandicapped means concomitant impairments (such as mentally retarded - blind, mentally retarded - orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accomodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

Native Language as defined by section 703(a)(2) of the Bilingual Education Act which provides as follows: IIa. 300.9

The term "native language" when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

1. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

2. If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, Braille, or oral communication).

Notification means written statements in English and in the primary language of the parent's home; and oral communication in the primary language of the parent's home. IIa. 300.505

Occupational Therapy means: IIa. 300.13

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; (b)(5)

2. Improving ability to perform tasks for independent functioning when functions are impaired or lost; and,

3. Preventing, through early intervention, initial or further impairment or loss of function.

Orthopedically Impaired means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., club-foot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures). IIa. 300.5 (b)(6)

Other Health Impaired means having limited strength, vitality or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes which adversely affects a child's educational performance. IIa. 300.5 (b)(7)

Parent means a parent, a guardian, or an individual acting as a parent in the absence of a parental guardian. The term "parent" means either parent, unless the LEA has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody which mother or father, the adoptive mother or father, or the legally appointed guardian or committee has custody of the child. IIa. 300.10

The term "parent" also means a surrogate parent appointed pursuant to provisions set forth in Regulations. A child 18 years or older may assert any rights under these regulations in his/her own name.

Parent Counseling and Training means assisting parents in understanding the special needs of their child and providing parents with information about child development. IIa. 300.13 (b)(6)

Participating Agency means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained. IIa. 300.560

Personally Identifiable Data means: IIa. 300.500

1. Name of a child, the child's parent, or other family member.

2. The address of the child;

3. A personal identifier such as the child's social security number or student number;

4. A list of personal characteristics which would make it possible to identify the child with reasonable certainty; or,

5. Other information which would permit reasonably certain identification of the child.

Party means an individual, agency, institution, or organization.

Physical Education is defined as follows: IIa. 300.14

1. The term means the development of: (b)(2)

   a. Physical and motor fitness;

b. Fundamental motor skills and patterns; and,

c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

2. The term includes special physical education, adapted physical education, movement education, and motor development.

Physical Therapy means services provided by a IIa. 300.13
qualified physical therapist upon medical referral and (b)(7)
direction; and includes the evaluation, testing, treatment, I. §54-273
reeducation and rehabilitation by physical, mechanical, or electronic measures and procedures of individuals who because of trauma, disease or birth defect present physical and/or emotional disorders. The term "physical therapy" does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes, including cauterization.

Placement Change means (1) the change in a child's academic offerings from general to special education and vice versa; (2) the change in the physical setting where a child's special education program is offered.

Preschool Handicapped Children (below age 5) may be identified by:

1. Any of the previously defined handicapping conditions;

2. "Developmentally delayed," which means a child below age 5 who exhibits a significant delay in one or more of the following areas of development:

a. Cognitive ability
b. Motor skills
c. Social/adaptive behavior
d. Perceptual skills
e. Communication skills

Program Change means any change in the way special education services are provided to a child as determined by the child's individualized education program.

Program Standards refer to those basic requirements which each special education program area shall meet. Program standards include those which are general to all areas of special education and those which are specific to a program for a particular handicapping condition.

Psychological Services include: IIa. 300.13 (b)(8)

1. Administering psychological and educational tests and other assessment procedures;

2. Interpreting assessment results;

3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and,

5. Planning and managing a program of psychological services, including psychological counseling for children and parents.

Public Agency includes the state educational agency, local educational agencies, intermediate educational units, and any other public agencies which are responsible for providing education to handicapped children. IIa. 300.11

Public Expense means that a required educational and evaluation service is provided at no cost to the parent. IIa. 300.503 (a)(3) (ii)

Public Notice means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, and other methods which are likely to succeed in providing information to the public.

Qualified means that the identified professional required to perform a service meets fully Board of Education certification regulations (and endorsement requirements), other state agency requirements for such professional service, and/or Virginia Licensure requirements as designated by State Law. IIa. 300.12

Recipient means any state or other political subdivision, any public or private agency, institution, organization, or other entity, or any person to which public financial assistance is extended directly or through another recipient.

Recreation includes: **IIa. 300.13 (b)(9)**

1. Assessment of leisure function;

2. Therapeutic recreation services;

3. Recreation program in schools and community agencies; and,

4. Leisure education.

Related Services means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools and parent counseling and training. **IIa. 300.13 (a)**

Senate Report No. 94-168 provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

The list or related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual states. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon state standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

Scholastic Records: see Education Records.

School Health Services means services provided by a qualified school nurse or other qualified person.

Screening means those processes which are used routinely with all children to help determine educational strengths and weaknesses.

Severely and Profoundly Handicapped is defined as follows:

a) The term includes individuals who:

1) Have primary disabilities that severely impair cognitive and/or adaptive skills and life functioning; and

2) May have associated severe behavior problems; and

3) May have the high probability of additional physical and/or sensory handicaps; and

4) Do require significantly more educational resources than are provided for the mildly and moderately handicapped in special education programs.

b) Specifically included are:

1) Individuals diagnosed as severely and profoundly mentally retarded; and/or

2) Individuals who exhibit two or more severe handicaps, i.e., physical sensory, behavioral.

Section 504 means that section of the Rehabilitation Act of 1973 which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance. **IIc. 104.3 (a) and (b)**

Seriously Emotionally Disturbed is defined as follows: **IIa. 300.5 (b)(8)**

1. The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

a. An inability to learn which cannot be explained by intellectual, sensory, or health factors;

b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

c. Inappropriate types of behavior or feelings under normal circumstances;

d. A general pervasive mood of unhappiness or depression; or

e. A tendency to develop physical symptoms or fears associated with personal or school problems.

2. The term includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined that they are seriously emotionally disturbed.

Sociological Services (Visiting Teacher/School Social Worker) include:

1. Preparing a social or developmental history on a handicapped child;

2. Group and individual counseling with the child and family;

3. Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

4. Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

Special Education means specifically designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

1. The term includes speech pathology, if the service consists of specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child.

2. The term also includes vocational education if it consists of specially designed instruction at no cost to the parent, to meet the unique needs of a handicapped child.

a. The terms in this definition are defined as follows:

1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.

2) Physical education means the development of:

(a) Physical and motor fitness;

(b) Fundamental motor skills and patterns; and

(c) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

3. The term includes special physical education, adaptive physical education, movement education, and motor development.

4. "Vocational Education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. **IIa. 300.14 (b)(3)**

The definition of "special education" is a particularly important one under these regulations since a child is not handicapped unless he or she needs special education. The definition of "related services" also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services" and the child (because not "handicapped") is not covered under the Act. **IIa. 300.14**

Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, which adversely affects the child's educational performance. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, **IIa. 300.5 (b)(9)** of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Speech and Language Impaired means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance. **IIa. 300.5 (b)(10)**

State Agencies means the State Departments of Education, Health, Mental Health and Mental Retardation, Correction, Rehabilitative Services, Social Services, the Rehabilitative School Authority, and the Department for the Visually Handicapped.

Student means any child for whom the LEA maintains educational records.

Support Services means implementing the comprehensive system of personnel development, recruitment and training of hearing officers and surrogate parents, and public information and parent-training activities relating to a free appropriate public education for handicapped children. **IIa. 300.370**

Surrogate Parent means a person appointed in accordance with procedures set forth to provide children who are in legal or physical custody of the state, or whose parents are not known or are unavailable, with the protection of procedural safeguards. **IIa. 300.514**

Testing means individual evaluation procedures (formal testing and assessment) to determine initial or continued eligibility for special education services.

Transportation includes: IIa. 300.13 (b)(13)

1. Travel to and from school and between schools;

2. Travel in and around school building; and

3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.

Visiting Teacher/School Social Worker (See Sociological Services) IIa. 300.13 (b)(11)

Visually Impaired means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children. IIa. 300.5 (b)(11)

Vocational Education means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree. This definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Public Law 94-482. (Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.) IIa. 300.14 (b)(3)

Ward of the State means all parental rights and responsibilities for the care and custody of a child have been terminated by Court order and the child has been placed in the care and custody of the State.

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Speech and Language Impaired, See Handicapping Condition
Speech-Language Pathologist, IIA6b4e2, IIFlc, IIF2el
State Operated Programs (SOP), Section III Generally
Status, IIA6b4f, IIAlO, IIClc
Subpoena, IIClh8, IIClm
Superintendent of Public Instruction, IIC3g-1, IIF6b2, IIF6b4b
Surrogate Parent, IIA6a4, IIClj6, Section IID Generally
  Qualification, IID2g, IID4
Suspension or Expulsion of Handicapped Children, IIB21
Teacher, IIA2ilb, IIA4c2, IIA6b4d, IIA6b4el-2, IIA7c, IIA7f2, IIBlela, IIBlf2, IIE2dla-b, IIE2d2b, IIFlc, IIF2a2, IIF2el
Testing, IIElb6&ll
Tests, IIA6a8, IIA6b, IIA6b4a-b, IIA6b4f, IIA7d, IICla5c
Therapy
  Occupational, IIA7f6
  Physical, IIA7f6
Time Limit, IIC2l3, IIC3f4
Time Line, IB3, IIC3i
Traineeship Loan, IIF2el
Transportation, IIBlf, IIF2a4
Tuition, IM, IIBlc2, IIF2cl-2, IIF2dl
Visually Handicapped, See Handicapping Condition
Ward of the State, IID2a4, IID2d4
Witness, IICli1b, IIClj4, IIClm, IIClh6, IID5g2, IIF6b5